

United States
Circuit Court of Appeals

For the Ninth Circuit. 6

DENZEL RIDER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Arizona

FILED

APR 1 - 1943

PAUL P. O'BRIEN,
CLERK

No. 10335

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Circuit Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States
for the District of Arizona

No. C 6276 Phoenix

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DENZEL LANE, alias DENZEL RIDER, alias
DENZEL MORGAN,

Defendant.

INDICTMENT

Viol: 38 U.S.C. 510 and 714

(Unlawfully receiving compensation)

In the District Court of the United States in and
for the District of Arizona, At the March term
thereof, A.D. 1942.

The Grand Jurors of the United States, impaneled, sworn, and charged at the term aforesaid, of the Court aforesaid, on their oath present, that Denzel Lane, alias Denzel Rider, alias Denzel Morgan, on or about June 30, 1940, and within the said District of Arizona, did wrongfully, unlawfully and fraudulently receive compensation from the United States as the unremarried widow of one Arthur C. Rider, deceased, which said compensation was received as follows, to-wit: that the said defendant did then and there wrongfully, unlawfully and fraudulently receive a check duly drawn on the Treas-

ury of the United States in the sum of \$30.00, payable to the order of Mrs. Denzel Rider, as the unremarried widow of the said Arthur C. Rider, which said check was duly executed and issued under the provisions of Sections 503 and 504, Title 38, U.S. C.A.; that said defendant did, upon receipt of said check, then and there endorse the same and receive the proceeds thereof as aforesaid, to-wit, the sum of \$30.00; that at said time and place said defendant was not entitled to receive said check or the proceeds therefrom, she then and there not being the unremarried widow of Arthur C. Rider, and that she then and there wrongfully, unlawfully and fraudulently received said check and the proceeds therefrom with the intent to defraud the United States; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Second Count: And the Grand Jurors aforesaid, on their oath aforesaid, do further present that Denzel Lane, alias Denzel Rider, alias Denzel Morgan, on or about July 31, 1940, and within the said District of Arizona, did wrongfully, unlawfully and fraudulently receive compensation from the United States as the unremarried widow of one Arthur C. Rider, deceased, which said compensation was received as follows, to-wit: that the said defendant did then and there wrongfully, unlawfully and fraudulently receive a check duly drawn on the Treasury of the United States in the sum of \$30.00, payable [4] to the order of Mrs. Denzel Rider, as the unremarried widow of the said Arthur C.

Rider, which said check was duly executed and issued under the provisions of Sections 503 and 504, Title 38, U.S.C.A.; that said defendant did, upon receipt of said check, then and there endorse the same and receive the proceeds thereof as aforesaid, to-wit, the sum of \$30.00; that at said time and place said defendant was not entitled to receive said check or the proceeds therefrom, she then and there not being the unremarried widow of Arthur C. Rider, and that she then and there wrongfully, unlawfully and fraudulently received said check and the proceeds therefrom with the intent to defraud the United States; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Third Count: And the Grand Jurors aforesaid, on their oath aforesaid, do further present that Denzel Lane, alias Denzel Rider, alias Denzel Morgan, on or about August 31, 1940, and within the said District of Arizona, did wrongfully, unlawfully and fraudulently receive compensation from the United States as the unremarried widow of one Arthur C. Rider, deceased, which said compensation was received as follows, to-wit: that the said defendant did then and there wrongfully, unlawfully and fraudulently receive a check duly drawn on the Treasury of the United States in the sum of \$30.00, payable to the order of Mrs. Denzel Rider, as the unremarried widow of the said Arthur C. Rider, which said check was duly executed and issued

under the provisions of Section 503 and 504, Title 38, U.S.C.A.; that said defendant did, upon receipt of said check, then and there endorse the same and receive the proceeds thereof as aforesaid, to-wit, the sum of \$30.00; that at said time and place said defendant was not entitled to receive said check or the proceeds therefrom, she then and there not being the unremarried widow of Arthur C. Rider, and that she then and there wrongfully, unlawfully and fraudulently received said check and the proceeds therefrom with the intent to defraud the United States; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Fourth Count: And the Grand Jurors aforesaid, on their oath aforesaid, do further present that Denzel Lane, alias Denzel Rider, alias Denzel Morgan, on or about September 30, 1940, and within the said District of Arizona, did wrongfully, unlawfully and fraudulently receive compensation from the United States as the unremarried widow of one Arthur C. Rider, deceased, which said compensation was received as follows, to-wit; that the said defendant did then and there wrongfully, unlawfully and fraudulently receive a check duly drawn on the Treasury of the United States in the sum of \$30.00, payable to the order of Mrs. Denzel Rider, as the unremarried widow of the said Arthur C. Rider, which said check was duly executed and issued under the provisions of Sections 503 and 504, Title 38, U.S.C.A.; that said defendant did, upon receipt of said check, then and there endorse

the same and receive the proceeds thereof as aforesaid, to-wit, the sum of \$30.00; that at said time and place said defendant was not [5] entitled to receive said check or the proceeds therefrom, she then and there not being the unremarried widow of Arthur C. Rider, and that she then and there wrongfully, unlawfully and fraudulently received said check and the proceeds therefrom with the intent to defraud the United States; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Fifth Count: And the Grand Jurors aforesaid, on their oath aforesaid, do further present that Denzel Lane, alias Denzel Rider, alias Denzel Morgan, on or about October 31, 1940, and within the said District of Arizona, did wrongfully, unlawfully and fraudulently receive compensation from the United States as the unremarried widow of one Arthur C. Rider, deceased, which said compensation was received as follows, to-wit: that the said defendant did then and there wrongfully, unlawfully and fraudulently receive a check duly drawn on the Treasury of the United States in the sum of \$38.00, payable to the order of Denzel Rider, as the unremarried widow of the said Arthur C. Rider, which said check was duly executed and issued under the provisions of Sections 503 and 504, Title 38, U.S. C.A.; that said defendant did, upon receipt of said check, then and there endorse the same and receive the proceeds thereof as aforesaid, to-wit, the sum of

\$38.00; that at said time and place said defendant was not entitled to receive said check or the proceeds therefrom, she then and there not being the unmarried widow of Arthur C. Rider, and that she then and there wrongfully, unlawfully and fraudulently received said check and the proceeds therefrom with the intent to defraud the United States; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Sixth Count: And the Grand Jurors aforesaid, on their oath aforesaid, do further present that Denzel Lane, alias Denzel Rider, alias Denzel Morgan, on or about November 30, 1940, and within the said District of Arizona, did wrongfully, unlawfully and fraudulently receive compensation from the United States as the unremarried widow of one Arthur C. Rider, deceased, which said compensation was received as follows, to-wit: that the said defendant did then and there wrongfully, unlawfully and fraudulently receive a check duly drawn on the Treasury of the United States in the sum of \$38.00, payable to the order of Denzel Rider, as the unremarried widow of the said Arthur C. Rider, which said check was duly executed and issued under the provisions of Sections 503 and 504, Title 38, U.S.C.A.; that said defendant did, upon receipt of said check, then and there endorse the same and receive the proceeds thereof as aforesaid, to-wit, the sum of \$38.00; that at said time and place said defendant was not entitled to receive said check or the

proceeds therefrom, she then and there not being the unmarried widow of Arthur C. Rider, and that she then and there wrongfully, unlawfully and fraudulently received said check and the proceeds therefrom with the intent to defraud the United States; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

F. E. FLYNN,

United States Attorney for
the District of Arizona. [6]

Indictment

A True Bill,

C. E. LAWRENCE,
Foreman.

[Endorsed]: Filed Jul. 16, 1942. [7]

In the United States District Court
for the District of Arizona

April 1942 Term.

At Phoenix.

MINUTE ENTRY OF FRIDAY, JULY 31, 1942

(Phoenix Division)

Honorable Albert M. Sames, United States District Judge, Presiding.

[Title of Cause.]

The Defendant, Denzel Lane, is present in person with her counsel, Robert R. Weaver, Esquire, and on motion of said counsel,

It Is Ordered that V. L. Hash, Esquire, be entered as associate counsel for the defendant.

The defendant is now duly arraigned, and now files motion to quash the indictment. Said motion is now duly argued and submitted to the Court, and

It Is Ordered that said motion to quash be and it is denied, to which ruling and order of the court the defendant excepts.

The defendant waives the reading of the indictment, a copy thereof having heretofore been furnished the defendant. The defendant's plea is not guilty, which plea is now duly entered, and

It Is Ordered that this case be continued to be set for trial. [8]

In the United States District Court for the
District of Arizona

October 1942 Term

At Phoenix.

MINUTE ENTRY OF THURSDAY,
DECEMBER 3, 1942

(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, Presiding.

[Title of Cause.]

This case comes on regularly for trial this day. Frank E. Flynn, Esquire, United States Attorney and E. R. Thurman, Esquire, Assistant United States Attorney, appear for the Government. The

defendant, Denzel Lane, is present in person with her counsel Robert R. Weaver, Esquire and George Wilson, Esquire. Louis L. Billar is present as Court reporter.

Both sides announce ready for trial.

Counsel now stipulate that trial may proceed with a panel of 26 veniremen and that the Government will waive 2 peremptory challenges. Examination of veniremen on *voire dire* is now had, and both sides pass the panel. On motion of Robert R. Weaver, Esquire, Counsel for the defendant.

It Is Ordered that said George Wilson, Esquire, be entered as associate counsel for the defendant.

A lawful Jury of twelve men is now duly empaneled and sworn to try this case.

The said Assistant United States Attorney now reads aloud the indictment to the jury and thereafter said counsel for the Government states to the Jury the defendant's plea of Not Guilty to said indictment.

Thereupon, It Is Ordered that all jurors not empaneled in the trial of this case be excused until further order.

Government's Case:

Dorothy Titcomb is now sworn and examined on behalf of the Government. [9]

The following Government's exhibits are now admitted in evidence:

1. Affidavit for marriage license
2. Marriage license and certificate

Gordon Farley is now sworn and examined on behalf of the Government.

The following Government's exhibits are now admitted in evidence:

3. Specimen of signature
4. Letter addressed to Gordon Farley and a reply thereto

J. P. Gross is now sworn and examined on behalf of the Government.

The following Government's exhibits are now admitted in evidence:

5. Application for benefit
6. Award of compensation
7. Copies of checks
8. Letter

And thereupon, at 11:55 o'clock a. m., It Is Ordered that the *further of* this case be continued until 2:00 o'clock p. m. this date, to which time the Jury being first duly admonished by the Court, the defendant and counsel are excused.

Subsequently, at 2:00 o'clock p. m., the Jury and all members thereof, the defendant and counsel for the respective parties being present pursuant to recess, further proceedings of trial are had as follows:

Government's Case Continued:

J. P. Gross heretofore sworn is now recalled and further examined on behalf of the Government.

Whereupon, the Government rests.

Defendant's Case:

Denzel Rider is now sworn and examined in her own behalf.

And the defendant rests.

Both sides rest.

Counsel for the defendant moves for a directed verdict on account of insufficient evidence, and [10]

It Is Ordered that said motion be and it is denied.

All the evidence *being, the case* is argued by respective counsel to the Jury. Whereupon, the Court duly instructs the Jury and said Jury retire at 3:50 o'clock p.m. in charge of two sworn bailiffs to consider of their verdict.

Subsequently, the defendant and all counsel being present, the Jury return in a body into open court at 4:10 o'clock p.m., and all members thereof being present, are asked if they have agreed upon a verdict. Whereupon, the Foreman reports that they have agreed and presents the following verdict, to-wit:

“UNITED STATES OF AMERICA,

Plaintiff,

Against

DENZEL LANE, alias DENZEL RIDER, alias
DENZEL MORGAN,

Defendant.

C-6276

VERDICT

We, The Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the defendant Denzel Lane guilty as charged in count one of the indictment, guilty as charged in count two of the indictment, guilty as charged in count

three of the indictment, guilty as *charge* in count four of the indictment, guilty as *charge* in count five of the indictment, and guilty as charged in count six of the indictment,

S. B. COOPER,
Foreman.”

The verdict is read as recorded and no poll being desired by either side, the Jury is discharged from the further consideration of this case and excused from further jury service until further order.

It Is Ordered that this case be set for sentence Monday, December 7, 1942 at ten o'clock a.m. [11]

In the United States District Court
for the District of Arizona

October 1942 Term

At Phoenix.

MINUTE ENTRY OF MONDAY,
DECEMBER 7, 1942

(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, Presiding.

[Title of Cause.]

This case comes on regularly for sentence this day.

The defendant, Denzel Lane, is present in person with her counsel, George Wilson, Esquire, and no legal cause appearing why judgment should not now be imposed, the Court renders judgment as follows:

C-6276

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DENZEL LANE, alias DENZEL RIDER, alias
DENZEL MORGAN,

Defendant.

JUDGMENT

Due proceedings having been had on the indictment filed herein presented against the defendant above named charging a violation of Title 38, Sections 510 and 714, United States Code, to-wit: wrongfully, unlawfully and fraudulently receive certain compensation from the United States with the intent to defraud the said United States, as charged in each of counts one to six of said indictment.

It appearing to the Court that the best interests of the defendant and the Government will be subserved thereby, [12]

It Is Ordered that the imposition of judgment and sentence herein be suspended for the period of five (5) years from and after this date and that said defendant be placed on probation during said period, on condition that she make restitution of the money unlawfully received, within six months from this date.

Dated December 7, 1942.

DAVE W. LING,
Judge. [13]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant:

Denzel Rider, 1452 East Fillmore Street, Phoenix, Arizona.

Name and Address of Appellant's Attorneys:

Geo. T. Wilson, 707 Title & Trust Bldg., Phoenix, Arizona.

R. C. Weaver, First National Bank Bldg., Phoenix, Arizona.

Offense:

Violation of Sections 510 and 714 Title 38 U.S.C., unlawfully receiving compensation from the United States of America as the unremarried widow of Arthur C. Rider.

Date of Judgment:

December 7, 1942.

Description of Judgment of Sentence:

That defendant is guilty as charged in the indictment and that imposition of sentence be suspended for a period of five years from the date of said judgment, conditioned that defendant repay to the United States of America the amount of compensation received by her since June 14, 1939, as the unremarried widow of Arthur C. Rider, deceased.

Name of Prison:

Defendant at liberty under the terms of the suspended sentence.

I, the above named appellant hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit [14] from the judgment above mentioned on the grounds set forth below.

1. That the Court erred in refusing to permit defendant to testify to the facts as substantially set forth in her offer of proof on file herein and in sustaining the objection of the prosecution thereto on the grounds that the facts set forth in said offer of proof were material and relevant on the issue of defendant's intent.

DENZEL RIDER,
Appellant.

Dated this 12th day of December, 1942.

R. C. WEAVER

GEO. T. WILSON

Attorneys for Appellant.

Copy received 12/12/42.

F. E. FLYNN,

U. S. Atty.

[Endorsed]: Filed Dec. 12, 1942. [15]

In the United States District Court
for the District of Arizona

October 1942 Term

At Phoenix.

MINUTE ENTRY OF SATURDAY,
DECEMBER 12, 1942

(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, Presiding.

[Title of Cause.]

No counsel appears for the Government. George
Wilson, Esquire, appears as counsel for the defend-
ant and now files defendant's Notice of Appeal, and

It Is Ordered that the defendant's Cost and bail
bond on appeal be fixed in the penal sum of
\$1250.00, and

It Is Further Ordered that counsel for both sides
appear before the Court on December 21, 1942, at
ten o'clock a.m. for such directions as may be ap-
propriate with respect to the preparation of the rec-
ord on appeal in this case. [16]

[Title of District Court and Cause.]

BOND ON APPEAL

Know All Men By These Presents:

That we, Denzel Lane alias Densel Rider alias
Denzel Morgan, as principal, and United States

Fidelity and Guaranty Company as surety, are held firmly and bound unto the United States of America in the full and just sum of Twelve Hundred and Fifty (\$1250.00) Dollars to be paid to the said United States of America, to which payment well and truly to be made, we bind ourselves, our lawful successors and assigns, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seal and dated this 23rd day of December, in the year of our Lord One Thousand Nine Hundred and Forty Two.

Whereas, lately in the October term A. D. 1942 of the District Court of the United States for the District of Arizona in a suit pending in said Court between the United States of America as plaintiff, and Denzel Lane alias Denzel Rider alias Denzel Morgan, as defendant, a judgment was rendered against the said Denzel Lane alias Denzel Rider alias Denzel Morgan, and said defendant has taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence in the aforesaid suit, and notice of the said appeal, in duplicate, having been filed with the clerk of the aforesaid District Court of the United States for the District of Arizona and a copy of such appeal having been duly served upon the United States Attorney for the District of Arizona, in the manner and within the time required by law and the rules of Court in such [17] cases made and provided.

Now, the condition of the above obligation is such that if the said Denzel Lane alias Denzel Rider alias

Denzel Morgan, shall appear in the United States Circuit Court of Appeals for the Ninth Circuit in San Francisco, State of California, on such day or days as may be appointed for the hearing of said *cuase* in said Court, and upon such day or days may be appointed by said Court until finally discharged therefrom, and shall abide by and obey all orders made by the said United States Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender herself in execution of the judgment and sentence of said District Court of the United States for the District of Arizona if said judgment against her shall be affirmed by the said United States Circuit Court of Appeals for the Ninth Circuit, then above obligation shall be void, otherwise to remain in full force and effect.

Now, therefore, and as a further condition of this bond, that if the said Denzel Lane alias Denzel Rider alias Densel Morgan, appellant above named, shall prosecute her appeal to the effect and shall pay all the taxable costs on appeal if she fails to make her appeal good, then above obligation shall be void, otherwise to remain in full force and effect.

And the surety in this obligation hereby covenants and agrees that in case of a breach of any conditions of this bond, the United States District Court for the District of Arizona may upon notice to said surety of not less than ten (10) days proceed summarily in this cause to ascertain the amount of taxable costs in the Circuit Court of Appeals which said surety is bound to pay on account of such

breach, and render judgment therefore against said surety and to order execution therefor.

MRS. DENZEL RIDER

Principal [18]

UNITED STATES FIDELITY
AND GUARANTY COMPANY

a Maryland corporation

[Seal]

O. D. BUCK

Attorney-in-Fact

E. H. SHUMWAY

Attorney-in-Fact

County of Maricopa,
State of Arizona—ss.

On this 23 day of December, in the year *on* thousand nine hundred and Forty-two beffore, E. H. Shumway, a Notary Public in and for said County and State residing herein, duly commissioned and sworn, personally appeared O. D. Buek known to me to be the Attorney-in-Fact of the United States Fidelity and Guaranty Company, a Maryland corporation, and acknowledged to me that he subscribed the name United States Fidelity and Guaranty Company, a Maryland corporation, thereto as principal, and his name as Attorney-in-Fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal]

E. H. SHUMWAY

Notary Public in and for Maricopa County, State of
Arizona.

My commission Expires October 1st, 1946.

Approved this 26 day of December, 1942.

DAVE W. LING

U. S. Dist. Judge.

[Endorsed]: Filed December, 1942. [19]

United States of America

District of Arizona

Before me, F. A. Hickernell, U. S. Commissioner for the District of Arizona, appeared E. H. Shumway, known to me to be the attorney in fact for United States Fidelity and Guaranty Company and acknowledged to me that he subscribed the name of said company to the within bond as principal and his name as attorney in fact.

Witness my hand and seal this 26th day of December, 1942.

[Seal]

F. A. HICKERNELL

U. S. Commissioner.

[Endorsed]: Filed Dec. 26, 1942. [20]

In the United States District Court
For the District of Arizona

October 1942 Term

At Phoenix

MINUTE ENTRY TUESDAY, JANUARY 6, 1943

(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, Presiding.

[Title of Cause.]

On motion of George T. Wilson, Esquire, counsel for the defendant,

It Is Ordered that the defendant's time to prepare, serve and file Bill of Exceptions herein be extended thirty days from and after this date. [21]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Denzel Rider, the defendant-appellant in the above entitled and numbered cause, in connection with her appeal herein, comes now and makes it known that, in the records, proceedings, verdict, judgment, and sentence appealed from, manifest error has intervened to her prejudice, in these things, to wit:

I.

The Court erred in sustaining the plaintiff's objection to the introduction into evidence of defend-

ant's Exhibit "A for Identification", which exhibit is in full as follows:

Phoenix, Arizona,
January 28, 1939

United States Atty. General
Washington, D. C.

I have letter from United States Atty. Gen. office stating they would handle direct from their office the Harriet McManus and Jacob Morgan case. Last Sat. I asked my atty. to reset the Rider v. Funk case which involves diamonds. My main witness Charlie J. Asche was shot. I asked the County Atty. to get me a book that Asche showed me on Sat. night where he saw Morgan with Nicodemus the day before the mail train robbery on Sept. 6. They got the books and are trying to pin the murder on Mrs. Asche. She didn't even know I had the case reset. This case would uncover who stole the Morris Plan diamonds in Tucson on January 28, 1936. I want help.

DENZEL RIDER

P. O. Box 1126 [22]

for the reason that said exhibit and the contents thereof were material, competent, and relevant evidence on the issue of defendant's intent to defraud the United States, as charged in each count of the indictment.

II.

The Court erred in sustaining the plaintiff's objection to the introduction into evidence of defend-

ant's Exhibit "B for Identification", which exhibit is in full as follows:

Department of Justice
Washington, D. C.

January 31, 1939

13M:MHH:vng

49-O

Mrs. Denzel Rider

P. O. Box 1126

Phoenix, Arizona.

Dear Madam:

The Department acknowledges receipt of your telegram of January 28, 1939, relative to the Harriet McManus and Jacob Morgan case and the case of Rider v. Funk.

The subject matter of your telegram will receive the attention of the Department.

Respectfully,

For the Attorney General
(Signed) BRIEN McMAHON
Assistant Attorney
General

for the reason that said exhibit and the contents thereof were material, competent, and relevant evidence on the issue of defendant's intent to defraud the United States, as charged in each count of the indictment.

III.

The Court erred in sustaining the plaintiff's objection to the question propounded to defendant, to wit: [23]

Will you tell the conversation that you had with George V. Lane at that time?

and to the introduction by defendant of said conversation in the latter part of March or early part of April, 1939, for the reason that said conversation and the statements made therein by George V. Lane to the defendant were material, competent, and relevant evidence on the issue of defendant's intent to defraud the United States Government, as charged in each count of the indictment.

IV.

The Court erred in sustaining the plaintiff's objection to defendant's testimony and evidence, as tendered and set forth in her Offer of Affirmative Proof, defendant's Exhibit "C for Identification", which exhibit is in full as follows:

The defendant now offers to prove affirmatively by her own testimony, by documentary evidence, and to corroborate the same by the testimony of witnesses:

That in March, 1939, and prior thereto, defendant had lost valuable personal property through theft and was then asserting a claim against various citizens of Phoenix; that she had been threatened with bodily harm because of said claim and had on one or more occasions been actually assaulted; that she appealed to local officers and failing to receive their assistance appealed to the Department of Justice of the Federal Government for assistance; that on January 31, 1939, the De-

partment of Justice wrote her promising to look into her case; that thereafter, and in the month of March, 1939, George V. Lane approached defendant and represented himself to be an agent of the Department of Justice of the United States Government sent by that Department from Washington to assist defendant in her efforts to recover her property and to protect her from further personal violence; that George V. Lane on several occasions thereafter took defendant to the Federal Court House in the City of Phoenix, and in the presence of several parties, had her turn over to him all of her records and files pertaining to her said personal property and to a claim which she then asserted against the United States Government to recover on a life insurance policy on the life of her deceased husband, Mr. Rider, in the sum of Ten Thousand (\$10,000) Dollars; that George V. Lane repeated his representations [24] of representing the Department of Justice on several different occasions between the month of March and the 14th day of June, 1939; that on or about the 12th day of June, 1939, George V. Lane told her it would be necessary for her to go through a pretended marriage with him in order that he might live in her house and give her protection against those who had forcibly assaulted her; that she refused on that occasions to enter into such contract; that on the 13th day of June, 1939, George V. Lane showed

her a letter purporting to be from the Department of Justice stating that it would be necessary for her to enter into a pretended marriage with George V. Lane and to otherwise follow his direction or the Department of Justice would withdraw him from her case and render her no further assistance; that she believed the representations so made that it was necessary for her to go through this marriage ceremony, that the marriage would not be a binding one but would be void; that it would in nowise affect her property or any right which she had against the United States Government, or any claim which she had previously asserted against the Government, or might in the future assert against the Government; that she did in that state of mind and under the belief that it was not a valid marriage she was contracting with George V. Lane accompany him to Nogales, Arizona and go through a marriage ceremony with him; that always thereafter she denied publicly having entered into any valid marriage with George V. Lane; she did not assume the name of Lane, and that she and Lane did not reside together as husband and wife.

That subsequent to the 14th day of June, 1939, the said George V. Lane continued his representations to her and to other parties to the effect that he was a Government agent assigned to her case and assisting her to recover her property and to protect her from physical

violence; that she always believed until informed otherwise in the month of March, 1940, that he was a Government agent as represented; that about the months of March and April, 1940, George V. Lane threatened to expose her to the Federal Government for having received a widow's compensation as the unremarried widow of Mr. Rider, a World War Veteran, unless defendant would turn over to him all of her property; this she refused to do. That she did thereafter receive and accept the pension checks mentioned in the indictment of this case from the Federal Government; that she cashed the same and retained the proceeds thereof; that in so doing she firmly believed that she was not lawfully married to George V. Lane and that she had full right to said pension. There is attached hereto certain documents in corroboration of this foregoing offer of proof. That the witnesses who will corroborate said offer of proof are, in part, Ed Echols, Sheriff of Pima County, Arizona; Bert Smith, Special Agent of the Santa Fe Railroad; Rue Kimball of Phoenix, Arizona; Mrs. Ernest Moore of Phoenix, Arizona; Dr. Browne and his wife, of Phoenix, Arizona; Mrs. Horace [25] Steele of Phoenix, Arizona; and Mrs. McGinnis of Phoenix, Arizona.

This offer is made and the proof is intended to disprove any criminal intent on the part of defendant to defraud the United States Gov-

ernment, or anyone else, or to commit any violation of Federal Statutes as charged in the indictment of this case.

for the reason that the statute, under which each count of the indictment is laid, makes the specific intent to defraud the United States an essential element of the crime charged, and the testimony and evidence tendered by said Offer of Affirmative Proof was material, relevant, and competent on that issue.

ROBERT W. WEAVER,

GEO. T. WILSON,

Attorneys for Defendant-Appellant, 707 Title & Trust Building, Phoenix, Arizona.

Received copy of the within Assignments of Error this 30th day of January, 1943.

E. R. THURMAN,

Asst. United States Attorney.

[Endorsed]: Filed Jan. 30, 1943. [26]

[Title of District Court and Cause.]

PROPOSED BILL OF EXCEPTIONS

Be It Remembered that the above entitled and numbered cause came on regularly for trial before the District Court of the United States for the District of Arizona, Phoenix Division, the Honorable Dave W. Ling presiding with a jury, commencing at the hour of 10:00 o'clock A.M. on December 3, 1942, and continuing thereafter until

the afternoon of said date, when the cause was submitted to the jury and the jury on the 3rd day of December, 1942, returned their verdict into open court, finding the defendant guilty on counts one, two, three, four, five, and six of the indictment.

At the trial of said cause the plaintiff, United States of America, was represented by the Honorable Frank E. Flynn, United States Attorney for the District of Arizona, and R. E. Thurman, Deputy United States Attorney, and the defendant appeared in person and was represented by her attorneys, Robert R. Weaver and Geo. T. Wilson. Both sides having announced ready for trial, and Louis L. Billar having been duly sworn as shorthand reporter, and the jury having been duly summoned into the jury box and duly sworn to try the cause, the following proceedings were had:

The indictment in said cause was read to the jury and [27] defendant's plea thereto of not guilty was stated, whereupon the United States of America, plaintiff, to sustain the allegations of said indictment, called Dorothy Titcomb as a witness on behalf of plaintiff, and said witness being duly sworn, testified as follows:

Direct Examination

My name is Dorothy Titcomb. I reside in Nogales, Arizona. At this time I am Clerk of the Superior Court, Santa Cruz County. I have been such since March, 1942. From May 8, 1939, until October, 1941, I was Deputy Clerk of the Superior Court of Santa Cruz County. I was such Deputy Clerk

on June 14, 1939. At that time Helen O'Keefe was the Clerk of the Superior Court of Santa Cruz County, Arizona, and Judge Gordon Farley was the Judge. He was such Judge on or about June 14, 1939. I am the custodian of the records of the Superior Court of Santa Cruz County and of the application for marriages. I have with me the original application for the issuance of a marriage license to George V. Lane and Denzel Morgan. The signature in the lower right hand corner of the application is my signature. At that time I was the Deputy Clerk of the Superior Court of Santa Cruz County.

The plaintiff offered said document in evidence, to which offer defendant duly objected on the grounds that said document was not shown to be relevant or material to the issues. The objection of defendant was overruled by the Court, to which ruling the defendant then and there duly excepted. Said document was then received in evidence, marked plaintiff's Exhibit No. 1, and is, in substance: [28]

Government's Exhibit No. 1

The original application for a marriage license, dated June 14, 1939, and signed and sworn to by George V. Lane and Denzel Morgan and recorded in the Office of the Clerk of the Superior Court in Santa Cruz County, Arizona, in Book 13 of Applications at page 396 thereof.

The witness Dorothy Titeomb then further testified: The woman applying for the marriage license wrote the signature Denzel Morgan on Government's Exhibit No. 1. I saw the woman who applied for the marriage license sign the name Denzel Morgan at the time she applied for the license in the Clerk's Office in Nogales. That is the lady who sits there with her attorney, Mr. Wilson. There was a marriage license issued subsequent to the application for a marriage certificate. I have a certified copy of it. My name appears on the back of it.

The plaintiff then offered said document in evidence, to which offer the defendant duly objected on the grounds that the document was a copy of an original and that the proper foundation for the reception of secondary evidence had not been laid. The Court overruled defendant's objection, to which ruling defendant then and there duly excepted. Said document was then received in evidence, marked Government's Exhibit No. 2, and is, in substance:

Government's Exhibit No. 2

A certified copy of a marriage license issued by the Clerk of the Superior Court of Santa Cruz County, Arizona, showing rites of matrimony between George V. Lane and Denzel Morgan on June 14, 1939, performed by Gordon Farley, Judge of said Court.

The witness further testified: At the time the application for the marriage license was signed by the defendant, I had a conversation with her. Only

the man with her was present [29] at the conversation. I don't remember the exact time of day; it was around 3:30 or 4:00 o'clock in the afternoon, and I do not remember anyone else in the office at the time. I can relate the conversation I had with the defendant at the time the application was signed. After I had issued the marriage license the defendant, who had done most of the talking up to that time, asked that I not publish it because she was—they were going to wait until they got into a new home, as far as I remember the conversation, before they would announce their marriage, and so she asked that I not publish it and I marked it to be what we called "buried", in other words, not give it to the newspaper. She also at that time asked me if the Superior Court Judge was in, that she wanted him to marry her.

Cross-Examination

During the year 1939 I was issuing 20 and 30 marriage licenses a month. I distinctly remember the issuance of this one. There was no controversy between the gentleman and the lady; the man didn't say anything. There was no controversy between the defendant and me. To the best of my recollection the reason she didn't want it published she wanted to get into her home before she notified her friends she was married. That is the best of my recollection concerning the statements made at that time. It isn't possible that she could have questioned the effect of that marriage upon any property right she might have had. I would have re-

membered it if she had. The only talking the gentleman did was in answer to questions I asked him. I did not hear him make any statement to the defendant. I turned my back and went to type the marriage license, but as far as I heard he didn't make any statements outside of the questions I [30] asked him. There was no time I was out of the room. It might have been that there was a time when I was issuing the marriage license that I did not hear the conversation between them.

Re-direct Examination

I think this was the 9th marriage license I had issued since I had been in the office. It was the second marriage license I had buried, not published. It was the second marriage license I had been instructed not to publish, and it was the first marriage of a person my own age. That is one reason it stands out. That is what impressed it upon my mind according to my remembrance. There is no doubt in my mind that this defendant is the woman that signed that application.

Re-cross Examination

Since the issuance of this license I have been asked frequently not to publish marriage licenses, but this was the second one from the time I had taken office on the 8th of May to the 14th of June; this is only the second I had been asked to bury. Two out of the nine asked me not to publish the license. There were no others that asked me not to publish.

GORDON FARLEY

was then called as a witness on behalf of plaintiff and, being duly sworn, testified as follows:

Direct Examination

My name is Gordon Farley. I occupied the official position of Judge of the Superior Court in Santa Cruz County, Arizona. I have been such Judge since January 1, 1939. I was such Judge on or about the 14th day of June, 1939, and I still am. I know who wrote the signature on the paper which you just [31] handed me. It was the lady seated at the second table, the defendant in this case.

The plaintiff then offered said paper in evidence, to which offer the defendant duly objected on the grounds that there was no relevance shown to the issues, and that it was not material to the issues and not competent evidence. The Court overruled the defendant's objection, to which ruling the defendant then and there duly excepted. The paper was then received in evidence, marked Government's Exhibit No. 3, and is, in substance:

Government's Exhibit No. 3

A sheet of paper bearing only the signature of Denzel Rider Morgan.

The witness then further testified: The situation under which this signature was written on Government's Exhibit No. 3 was that "The defendant came to Nogales last month and appeared in the Clerk's Office and I went over there, I was on busi-

ness in connection with the Court, and the Clerk informed me that this was Mrs. Rider who had come down to Nogales for a copy of the marriage certificate. She was accompanied by a gentleman, and she asked me if I had ever seen her before. I think I told her I didn't remember ever having seen her. Then she talked a little while and I said did you ever write me a letter in connection with a marriage license recently? She said she had not, so then I requested her to sign her name on this slip of paper so that I might compare it to a signature affixed to the letter that I had received from this woman who had been married by me in '39. So Mrs. Rider, or Mrs. Lane, the defendant in this case, signed the name Denzel Rider and at my request added the name Morgan to this slip of paper." [32]

I remember performing a marriage between George V. Lane and Denzel Morgan. There was something said between the defendant and me when she was down in Nogales recently with respect to this marriage. We discussed the marriage and at that time she stated that she had not been married in Nogales and I told her I could not identify her at that time, it had been several years and I had married quite a number of people in the meantime. I have no recollection of just who the people were but I remember the marriage. I have a faint recollection of the Clerk coming over to my office and telling me that there was a couple that wanted to be married, and I recall that the woman appeared

to be several years older than the age given on the marriage license. The man was rather a young appearing man and I would say he was probably forty—somewhere between forty and fifty, but the woman's age was listed as thirty-nine on the marriage license and it occurred to me at the time that I thought she was several years older than that. We discussed that, the defendant and I, in our conversation in the Clerk's Office when she was in Nogales last month. She commented on that fact, and I said well, I distinctly remember that the couple I married the woman was considerably older in my opinion than appeared on the marriage license. I have the letter that was sent to me. It is signed by Denzel Rider. This is the letter and the yellow sheet attached to it is my reply. This letter is in the same condition it was when I received it in the mail. The signature on the letter is the same that the letter bore when I received it in the mail.

The plaintiff then offered said letter, to which was attached said yellow sheet, in evidence for the purpose only of showing the defendant's admissions with respect to the marriage, [33] to which offer the defendant duly objected on the grounds that it was not shown that the defendant wrote this letter and that the letter had not been duly qualified to be received in evidence. The Court overruled defendant's objection, to which ruling defendant then and there duly excepted. Said letter, together with said yellow sheet attached thereto, was then received in evidence, marked Government's Exhibit No. 4, and is, in substance :

Government's Exhibit No. 4

An original typewritten letter dated March 4, 1940, addressed to the Hon. Gordon Farley, Nogales, Arizona, and signed Denzel Rider, P.O. Box 1126, Phoenix, Arizona, and the answer thereto dated March 5, 1940, addressed to Mrs. Denzel Rider, P.O. Box 1126, Phoenix, Arizona.

The witness then further testified: I mailed my answer to the address of the defendant at that time. I put postage on it. My answer was never returned to me.

Plaintiff's Exhibit No. 4 in evidence was then read in part to the jury.

Cross-Examination

I have no recollection as to what either the man or the woman I married on June 14, 1939, looked like, except that the woman was older in my opinion than appeared on the marriage license. I can't identify the defendant as the woman I married on that occasion; I don't know whether she is the woman or not, and I so stated to her a couple of weeks ago.

J. P. GROSS

was then called as a witness on behalf of plaintiff and, being duly sworn, testified as follows:

Direct Examination

My name is J. P. Gross. I live in Tucson. I am an [34] attorney for the Veterans Administration. The Veterans Administration is a department of

the Government of the United States of America. I have been such attorney for the Veterans Administration almost twenty years. As attorney for the Veterans Administration my duties with respect to the investigating and preparing and interviewing with respect to awards made to widows of deceased veterans is that I represent the Administrator of veterans' affairs with respect to all claims within this jurisdiction, embracing not only active, live cases; that is, where veterans are still living, but with respect to veterans deceased and their dependents are paid. We handle all its cases. I know of my own knowledge the necessary steps a widow of a deceased veteran would take in obtaining an award. Before I came to Arizona I was in Washington and handled all types of cases, and it is based on a claim No. 526, which is an affidavit and an application made by the claimant based on the military service of some man bearing a "C" number or claim number. This was all identified with one file. They are passed upon by a group of examiners and awards officers. They usually request evidence in support of the claims, such as marriage——

To this evidence defendant duly objected on the grounds that the witness was not qualified to testify on matters given in his testimony, and that the regulations of the department are the best evidence in the matter of settlement and payment of claims. The Court overruled defendant's objection, to which ruling the defendant then and there duly excepted.

The witness was then permitted to testify, and did testify:

In connection with every application Form 526 by [35] beneficiary they require evidence of a relation, and that is usually in the form of a marriage certificate to support it, and if the evidence appears to be in order an award is made and notice of that award is given the beneficiary. I have the original application for an award. I have in my files, the original application for an award due on account of the death of a veteran signed by one Denzel Lane Rider, the unmarried widow of Arthur C. Rider.

Thereupon the witness produced a document and testified: This is the original Form 526, July 24, 1922. It has been in my care and custody as attorney for the Veterans Bureau. It is an original document and is now in the same form as when I first received it. The signature on the back of it has been there at all times.

On voir dire the witness testified: I am the custodian of this document by the delegation of the Administrator. I am designated under Section 5 for all cases within the Arizona jurisdiction. This document was never filed with me originally. I obtained it from Washington, D. C. The office at Washintgon, D. C. has delegated me as the proper custodian of the instrument.

The plaintiff offered the document in evidence, to which offer the defendant duly objected on the grounds that the witness had not been qualified. The

Court overruled defendant's objection, to which ruling the defendant duly excepted. The document was then received in evidence, marked Government's Exhibit No. 5, and is, in substance:

Government's Exhibit No. 5

An application signed by Denzel Rider for compensation on account of the death of World War Veteran Arthur C. Rider for herself and her minor son, Vaughn D. Rider, [36] as the widow and son respectively of said veteran, dated July 24, 1922, and signed and sworn to by Denzel Rider.

The witness then testified: Subsequent to the presentation of this application the department granted an award. I have the original copy of the award.

The witness then produced a document and testified: This is the award. It is in the usual customary form sent to a widow when an award has been allowed by the department.

The plaintiff then offered said document in evidence, to which offer the defendant then and there objected on the grounds that the witness was not qualified as the proper custodian of the document. The Court overruled defendant's objection, to which ruling the defendant then and there duly excepted. The document was received in evidence, marked plaintiff's Exhibit No. 6, and is, in substance:

Government's Exhibit No. 6

Award of compensation by the United States

Government to Denzel Rider of \$35.00 per month commencing July 15, 1922, in accordance with the Act of Congress of October 6, 1917. The compensation payable under the award was granted on account of the death of World War Veteran Arthur C. Rider and is for the benefit of his widow and child.

The witness then testified: An award is paid on the United States Treasury check by the disbursing officer of the Veterans Administration.

To this evidence the defendant then and there duly objected and moved that it be stricken on the grounds that the witness had not been qualified to testify how the award was made and the manner of the payment. The Court overruled defendant's objection, to which ruling defendant duly excepted.

The plaintiff then offered in evidence six certified [37] copies of checks. The defendant duly objected to said offer on the grounds that the witness was not qualified as, or shown to be, the proper custodian of the documents. The Court overruled defendant's objection, to which ruling the defendant duly excepted. The six checks were then received in evidence, marked Government's Exhibit No. 7, and are, in substance:

Government's Exhibit No. 7

Certified copies of six checks dated respectively June, July, August, September, October and November, 1940, drawn on the Treasurer of the United States, issued by the Division of

Disbursements for Veterans Administration and payable to the order of Mrs. Denzel Rider as the unremarried widow of Arthur C. Rider (four checks for \$30.00 each and two for \$38.00 each), and endorsed on the back Mrs. Denzel Rider as unremarried widow of Arthur C. Rider, P. O. Box 1126, Phoenix, Arizona, which checks were marked paid by the bank.

The witness then testified: When an award has been allowed it is designated by number and identified by numbers assigned to each individual payee's case, and those are borne out not only on the claim itself, on the award itself, but also on the checks issued by the United States Treasurer. No two awards would have the same number. On Government's Exhibit No. 6 in evidence I find the award number in this particular matter is C-824,832. An "X" before the number would mean that the party was then deceased. That same number XC-824,832, appears on the face of the checks at the right hand corner of the payee's name.

The witness was then handed a piece of paper and testified: This paper is a part of my records filed in this case now before the Court. The signature on the paper is that of Mrs. Denzel Rider.

Thereupon the plaintiff then offered the paper in [38] evidence.

On voir dire the witness testified: I did not see Mrs. Denzel Rider write this signature.

The defendant then objected to said offer on the grounds that the letter had not been qualified as a

letter written by this defendant. The Court overruled defendant's objection, to which ruling the defendant duly excepted. The letter was then received in evidence, marked Government's Exhibit No. 8, and is, in substance:

Government's Exhibit No. 8

An original letter dated at Albuquerque, New Mexico, September 21, 1929, addressed to the Veterans Bureau, giving notice of change of address of Mrs. Denzel Rider and signed Mrs. Denzel Rider.

The number XC-824832 which appears in Government's Exhibit No. 8 in evidence corresponds with the number on the checks and in the award. Referring to Exhibit No. 6 in evidence, which was an award of compensation, the department notifies the recipient of an award by sending them a letter notifying them that the award on the application previously filed has been granted, and telling them the condition under which the award was made and under which it was continued. All the department would have would be a copy of that notice of award. The original would be sent to the party who was the recipient and in this case would be the widow.

Thereupon Government's Exhibit No. 1 was read to the jury. Government's Exhibits No. 3 and 5 were then read to the jury. Government's Exhibit No. 7 and 8 were read to the jury.

Cross Examination

I did not testify on direct examination that I had

made an investigation in this case, but I did make an investigation. [39]

The foregoing was all the evidence submitted by plaintiff and the plaintiff rested.

Thereupon, the defendant entered upon the presentation of evidence in support of her plea of "not guilty" to each count of the indictment.

DENZEL RIDER

was then called as a witness in her own behalf, and, being duly sworn, testified:

Direct Examination

My name is Denzel Rider and I am the defendant in this cause. I was born and reared in the State of Indiana. I am forty-seven years of age. I was forty-seven the 12th of September. I was married to Arthur C. Rider, a World War Veteran in Anderson, Indiana, on the 3rd day of April, 1920. One child, Vaughn Rider, was born as a result of that marriage on February 20, 1921. He is not now residing with me; he is in the Army. I have a telegram he is on his way here. Arthur C. Rider died on July 14, 1922, and since then I have been awarded a Government pension of approximately Thirty (\$30.00) Dollars by the Federal Government as the widow of Arthur C. Rider, a veteran of the World War. Since then I have collected the pension. I received a notice from the Veterans Claims Bureau on December—the letter was written on December 4, 1940, and I received it about the 8th of December, 1940, and since then I

have not received the widow's pension; it has been denied me. I have resided in the City of Phoenix, Arizona, since October, 1931. For the past several years I have been engaged in the parking lot business, parking automobiles and selling gasoline. I do the work personally. My place of business is located at Second Street and Monroe. I started in the parking lot business in October of 1937. I first met the man known as George V. Lane [40] the latter part of March or the first of April, 1939. It was about six weeks after I had wired the Attorney General's office for help. Prior to that day I had difficulty concerning my personal property and at that time I was asserting a claim against people for the theft of my property.

Mr. Wilson: And at that time and prior thereto, had you been assaulted physically by any parties of the City of Phoenix because of this claim?

Mr. Thurman: I object to that as immaterial, incompetent and irrelevant.

The Court: What does that have to do with this?

Mr. Wilson: Your Honor, I might say our whole defense goes to the question of criminal intent. The Statute provides that the Government must show that this was done to defraud the United States Government; and I propose to show by this witness the claim that she had made because of this property, the appeal to the authorities, and the advent of George V. Lane representing himself to be with the Department of Justice, and to show

what has happened from that time up to the present moment.

The Court: Well, I will sustain the objection then.

Mr. Wilson: An exception, please, to the ruling of the Court.

Mr. Wilson: Had you, prior to the time you met George V. Lane applied to the Department of Justice of the United States for assistance in your behalf?

The Witness: Yes.

Mr. Thurman: I object to that on the same grounds that I objected to before.

The Court: The same ruling. [41]

Mr. Wilson: And let me ask you, Mrs. Rider, showing you a telegram, is this the telegram you sent to the Department of Justice in the latter part of January, 1939?

Mr. Thurman: I object to the question, immaterial, and incompetent.

The Witness: Yes. This is the telegram I wired. It is a copy of the telegram.

Mr. Wilson: And showing you this letter, is that the letter that you received from the Department of Justice in answer to your telegram?

The Witness: Yes, sir.

Mr. Wilson: We offer this telegram in evidence, if the Court pleases, at this time.

Mr. Thurman: We object to that, Your Honor, as being incompetent, immaterial and irrelevant. And we make a further objection, Your Honor, that it is self-serving also.

The Court: I don't see what it would have to do with the case. I don't see any connection with the matter charged in this indictment.

Mr. Wilson: Except that it will touch upon the question of criminal intent of the accused in doing the things set out in the indictment, the things which she is charged with doing that constituted the crime.

The Court: The objection will be sustained.

Mr. Wilson: And may we have an exception to the ruling of the Court, and may these be marked for identification in the case?

The Clerk: The telegram will be defendant's Exhibit A for identification; the letter is Defendant's Exhibit B for identification. [42]

The telegram was then marked Defendant's Exhibit A for identification, and the letter was marked Defendant's Exhibit B for identification, and said documents are in full as follows:

Defendant's Exhibit A
for Identification

Phoenix, Arizona, January 28, 1939
United States Atty. General
Washington, D. C.

I have letter from United States Atty. Gen. office stating they would handle direct from their office the Harriet McManus and Jacob Morgan case. Last Sat. I asked my atty. to reset the Rider v. Funk case which involves diamonds. My main witness Charlie J. Ashe was shot. I asked the County Atty. to get me a

book that Asche showed me on Sat. night where he saw Morgan with Nicodemus the day before the mail train robbery on Sept. 6. They got the books and are trying to pin the murder on Mrs. Asche. She didn't even know I had the case reset. This case would uncover who stole the Morris Plan diamonds in Tucson on January 28, 1936. I want help.

DENZEL RIDER

P. O. Box 1126

Defendant's Exhibit B
for Identification

Department of Justice
Washington, D. C.

January 31, 1939

13M:MHH:vng

49-O

Mrs. Denzel Rider

P. O. Box 1126

Phoenix, Arizona

Dear Madam:

The Department acknowledges receipt of your telegram of January 28, 1939, relative to the Harriet McManus and Jacob Morgan case and the case of Rider v. Funk. [43]

The subject matter of your telegram will receive the attention of the Department.

Respectfully,

For the Attorney General

(Signed) BRIEN McMAHON

Assistant Attorney General

The Witness: I met George V. Lane in March or April, 1939. He came to my parking lot on Second Street and Monroe about 2:00 o'clock in the afternoon. He was alone at the time. He was carrying a brief case.

Mr. Wilson: Will you tell the conversation you had with George V. Lane at that time?

Mr. Thurman: I think that is highly objectional about relating this conversation with this man Lane at that time. There is a marriage which has been proved here in this Courtroom, and it is self-serving.

The Court: What was the date of this visit, before or after the alleged—

Mr. Wilson: This was in the latter part of March or early part of April, 1939.

The Court: It is rather hard to tell whether it would be material or not. Well, I will sustain the objection.

Mr. Wilson: May there be an exception to the ruling of the Court. May I have a conference with counsel and with Your Honor just to shorten this matter and to show to the Court what we—

(A discussion was had at the bench between Court and counsel not audible to the jury.)

Mr. Wilson: We now make a formal tender of proof in this case, and the proof all goes to the question solely of the intent of the accused at the time she performed the acts charged [44] against her in the indictment and which it is claimed con-

stituted a crime. To that we will attach the documents which will corroborate it.

The Court: Have you read this?

Mr. Thurman: I have not. I want to object to the offer of proof of the defendant in this case, for the reason it is self-serving, incompetent, irrelevant and immaterial, and there is no basis for defense in this action.

The Court: I think that is true; self-serving.

Mr. Wilson: And the ruling of the Court is sustaining the objection?

The Court: Yes.

Mr. Wilson: At this time, if the Court please, the defendant respectfully excepts to the ruling of the Court denying our right to substantiate our offer of proof, and may we have the privilege of having our offer of proof with the documents supporting it made exhibits in this case?

The Court: Yes.

The document entitled Offer of Affirmative Proof by the Defendant in the Above Entitled and Numbered Cause was received and marked as Defendant's Exhibit C for identification. Said exhibit, omitting the title of the Court and caption, is in full as follows:

Defendant's Exhibit C
for Identification

Offer of Affirmative Proof by the Defendant
in the Above Entitled and Numbered Cause

The defendant now offers to prove affirma-

tively by her own testimony, by documentary evidence, and to corroborate the same by the testimony of witnesses:

That in March, 1939, and prior thereto, defendant had lost valuable personal property through theft and was [45] then asserting a claim against various citizens of Phoenix; that she had been threatened with bodily harm because of said claim and had on one or more occasions been actually assaulted; that she appealed to local officers and failing to receive their assistance appealed to the Department of Justice of the Federal Government for assistance; that on January 31, 1939, the Department of Justice wrote her promising to look into her case; that thereafter, and in the month of March, 1939, George V. Lane approached defendant and represented himself to be an agent of the Department of Justice of the United States Government sent by that Department from Washington to assist defendant in her efforts to recover her property and to protect her from further personal violence; that George V. Lane on several occasions thereafter took defendant to the Federal Court House in the City of Phoenix, and in the presence of several parties, had her turn over to him all of her records and files pertaining to her said personal property and to a claim which she then asserted against the United States Government to recover on a life insurance policy on the life of her deceased hus-

band, Mr. Rider, in the sum of Ten Thousand (\$10,000) Dollars; that George V. Lane repeated his representations of representing the Department of Justice on several different occasions between the month of March and the 14th day of June, 1939; that on or about the 12th day of June, 1939, George V. Lane told her it would be necessary for her to go through a pretended marriage with him in order that he might live in her house and give her protection against those who had forcibly assaulted her; that she refused on that occasion to enter into such contract; that on the 13th day of June, 1939, George V. Lane showed her a letter purporting to be from the Department of Justice stating that it would be necessary for her to enter into a pretended marriage with George V. Lane and to otherwise follow his direction or the Department of Justice would withdraw him from her case and render her no further assistance; that she believed the representations so made that it was necessary for her to go through this marriage ceremony, that the marriage would not be a binding one but would be void, that it would in nowise affect her property or any right which she had against the United States Government, or any claim which she had previously asserted against the Government, or might in the future assert against the Government; that she did in that state of mind and under the belief that it was not a valid marriage she was contracting with

George V. Lane accompany him to Nogales, Arizona and go through a marriage ceremony with him; that always thereafter she denied publicly having entered into any valid marriage with George V. Lane; she did not assume the name of Lane, and that she and Lane did not reside together as husband and wife.

That subsequent to the 14th day of June, 1939, the said George V. Lane continued his representations to her and to other parties to the effect that he was a [46] Government agent assigned to her case and assisting her to recover her property and to protect her from physical violence; that she always believed until informed otherwise in the month of March, 1940, that he was a Government agent as represented; that about the months of March and April, 1940, George V. Lane threatened to expose her to the Federal Government for having received a widow's compensation as the unremarried widow of Mr. Rider, a World War Veteran, unless defendant would turn over to him all of her property; this she refused to do. That she did thereafter receive and accept the pension checks mentioned in the indictment of this cause from the Federal Government; that she cashed the same and retained the proceeds thereof; that in so doing she firmly believed that she was not lawfully married to George V. Lane and that she had full right to said pension. There is attached hereto certain documents in corroboration of

this foregoing offer of proof. That the witnesses who will corroborate said offer of proof are, in part, Ed Echols, Sheriff of Pima County, Arizona; Bert Smith, Special agent of the Sante Fe Railroad; Rue Kimball of Phoenix, Arizona; Mrs. Ernest Moore of Phoenix, Arizona; Dr. Browne and his wife, of Phoenix, Arizona; Mrs. Horace Steele of Phoenix, Arizona; and Mrs. McGinnis of Phoenix, Arizona.

This offer is made and the proof is intended to disprove any criminal intent on the part of defendant to defraud the United States Government, or anyone else, or to commit any violation of Federal Statutes as charged in the indictment of this case.

ROBERT WEAVER

GEO. T. WILSON

Attorneys for Defendant

707 Title & Trust Bldg.

Phoenix, Arizona

The plaintiff then waived cross-examination of the witness. The defendant offered no further evidence and rested. The plaintiff offered no rebuttal evidence and rested.

The defendant then moved for an order directing the jury to return a verdict of not guilty on each count of the indictment on the grounds that the evidence offered by the Government was not sufficient to prove the allegations of the indictment, or the commission of any crime by the defendant,

beyond a reasonable doubt, that there was a failure of proof showing that defendant ever contracted marriage with any man, [47] or showing that, when she endorsed the checks she was not the unremarried widow of Arthur C. Rider.

Defendant's motion was denied, to which ruling the defendant duly excepted.

The cause was then argued to the jury; the jury was then instructed on the law and retired to consider its verdict.

The defendant presents the foregoing as her Proposed Bill of Exceptions in the above entitled and numbered cause and prays that same may be settled and allowed.

Dated this 30th day of January, 1943.

ROBERT R. WEAVER

GEO. T. WILSON

Attorneys for Defendant

707 Title & Trust Bldg.

Phoenix, Arizona

The foregoing Bill of Exceptions is correct and may be settled and allowed by the Court.

Dated this 2nd day of February, 1943.

F. E. FLYNN

E. R. THURMAN

United States Attorney

The foregoing Bill of Exceptions is correct and is hereby settled, allowed and approved.

Dated this 2 day of February, 1943.

DAVE W. LING

Judge of the District Court
of the United States for the
District of Arizona. [48]

Received copy of proposed bill of exceptions this
1-30-43.

E. R. THURMAN

Asst. U. S. Attorney

[Endorsed]: Deft's Proposed Bill of Exceptions
Filed Jan. 30, 1943. Edward W. Scruggs, Clerk,
United States District Court for the District of
Arizona. By Gwen. Roby, Deputy Clerk.

[Endorsed]: Bill of Exceptions Filed Feb. 2,
1943. Edward W. Scruggs, Clerk, United States
District Court for the District of Arizona. By
Gwen. Roby, Deputy Clerk. [49]

In the United States District Court
for the District of Arizona

October 1942 Term

At Phoenix

MINUTE ENTRY OF TUESDAY,
FEBRUARY 2, 1943

(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, presiding.

[Title of Cause.]

E. R. Thurman, Esquire, Assistant United States Attorney, appears for the Government. George Wilson, Esquire, appears as counsel for the defendant. Said counsel now stipulate that defendant's Proposed Bill of Exceptions may be amended by interlineation by adding the words "which checks were marked paid by the bank" following the word "Arizona" in line 16 of page 12 thereof, and that the same may thereafter be settled and allowed by the Court, and

It Is Ordered that said Proposed Bill of Exceptions, as so amended, be settled, allowed and approved as the Bill of Exceptions in this case.

[50]

[Title of District Court and Cause.]

ORDER TRANSMITTING ORIGINAL
EXHIBITS IN LIEU OF COPIES.

On motion of the defendant-appellant:

It Is Ordered that the Clerk of this Court transmit to the United States Circuit Court of Appeals for the Ninth Circuit, with the certified transcript of record, the original exhibits introduced into evidence on the trial of this cause, including the original reporter's transcript of evidence, in lieu of copies thereof.

Dated this 2nd day of February, 1943.

DAVE W. LING

Judge of the District Court
of the United States, for the
District of Arizona.

[Endorsed]: Filed Feb. 2, 1943. [51]

In the United States District Court
for the District of Arizona

October 1942 Term

At Phoenix

MINUTE ENTRY OF FEBRUARY 11, 1943
(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, presiding.

[Title of Cause.]

On motion of George T. Wilson, Esquire, counsel
for the defendant.

It Is Ordered that the Clerk of this Court trans-
mit to the United States Circuit Court of Appeals
for the Ninth Circuit, with the transcript of record
herein, Defendant's exhibits A, B and C marked for
identification at the trial of this case. [52]

[Title of District Court and Cause.]

PRAECIPE OF DEFENDANT FOR
RECORD ON APPEAL

To the Clerk of the District Court of the United
States for the District of Arizona:

The defendant-appellant, Denzel Rider, hereby requests that you make a transcript of the record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to her appeal taken in the above entitled cause, and to include in such transcript of record the following:

1. Indictment.
2. Verdict of Jury.
3. Judgment and Sentence entered December 7, 1942.
4. Notice of Appeal.
5. Bond on Appeal.
6. Bill of Exceptions.
7. Assignment of Errors.
8. Order Directing Transmittal of Original Exhibits of February 2, 1943.
9. The following minute entries:
Minute Entry of July 31, 1942,
December 3, 1942,
December 12, 1942,
January 6, 1943,
February 2, 1943. [53]
10. This Praecipe.

Dated at Phoenix, Arizona this 2nd day of February, 1943.

ROBERT R. WEAVER

GEO. T. WILSON

Attorneys for Defendant-
Appellant,

Received copy of the within Praecepte this 2nd day of February, 1943.

F. E. FLYNN (G)

United States Attorney.

[Endorsed]: Filed Feb. 2, 1943. [54]

In the United States District Court
For the District of Arizona

CLERK'S CERTIFICATE TO
TRANSCRIPT OF RECORD

United States of America,
District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of said Court, including the records, papers and files in the case of United States of America, plaintiff, vs. Denzel Lane, alias Denzel Rider, alias Denzel Morgan, defendant, numbered C-6276 Phoenix, on the docket of said Court.

I further certify that the attached pages, numbered 1 to 54, inclusive, contain a full, true and correct transcript of the proceedings had in said cause,

and of all the papers filed therein, together with the endorsements of filing thereon, called for and designated in Defendant's Praeceptum for Record on Appeal filed therein and made a part of the transcript attached hereto, as the same appear from the originals of record remaining on file in my office as such Clerk, in the City of Phoenix, State and District aforesaid.

I further certify that the original reporter's transcript, and all original exhibits introduced in evidence at the trial of said cause, to-wit: Government's exhibits 1 to 8, inclusive; and Defendant's exhibits A, B and C, marked for identification at the trial of said cause, are transmitted herewith pursuant to orders of the Court.

I further certify that the Clerk's fee for preparing and certifying this said transcript of record amounts to the sum of \$10.40 and that said sum has been paid to me by counsel for the appellant.

Witness my hand and the seal of said Court this 11th day of February, 1943.

[Seal] EDWARD W. SCRUGGS,

Clerk

By WM. H. LOVELESS,

Chief Deputy Clerk [55]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT

The above entitled and numbered cause came on duly and regularly for trial in the above-mentioned

court, before Hon. Dave W. Ling, Judge, presiding with a jury, commencing at the hour of 10 o'clock A. M. on the 3d day of December, 1942.

The plaintiff was represented by Frank E. Flynn, United States Attorney and E. R. Thurman, assistant to the United States Attorney.

The defendant was represented by her attorney, George Wilson.

Thereupon the following proceedings were had:

The Court: Call 26 jurors. Will the Government waive two challenges?

Mr. Thurman: Yes, sir.

The Court: Is that agreeable with counsel for the defendant? [1*]

Mr. Wilson: Yes, that is all right, your Honor.

The Court: All right, call the names of all the jurors in the box. As your names are called, come forward, gentlemen.

Thereupon, 26 jurors were called, examined on their voir dire by the court and the attorneys, after which the following jurors were selected and duly sworn:

James M. Kempson; L. R. McPeck; Harry Amster; C. F. Brahm; Ralph C. Barton; Robert L. Boydston; Sydney B. Cooper; Connol H. Frantz; John Gabriel; Melvin C. Jenson; Ray C. Fortenberry and J. Otis Sullivan.

The Court: You may read the indictment.

(The indictment was read to the jury by Mr. Thurman.)

*Page numbering appearing at top of page of original Reporter's Transcript.

The Court: You may call your first witness.

Mr. Thurman: Dorothy Titcomb.

DOROTHY TITCOMB

was called as a witness on behalf of Plaintiff, and being first duly sworn, testified as follows:

Direct Examination [2]

Mr. Thurman:

Q. Will you please state your name?

A. Dorothy Titcomb.

Q. Where do you live?

A. Nogales, Arizona.

Q. And what is your business or occupation?

A. At this time?

Q. Yes.

A. Clerk of the Superior Court, Santa Cruz County.

Q. Santa Cruz County, Arizona?

A. Yes.

Q. How long have you been such Clerk in the Superior Court of Santa Cruz County?

A. Since March of 1942.

Q. Prior to March, 1942, did you have any connection or duty with the Clerk's office of the Superior Court of Santa Cruz County?

A. Yes, from May 8th, 1939, until October, 1941, I was Deputy Clerk of the Superior Court.

Q. From May 8th—

A. (Interrupting) '39.

Q. And on June 14th, 1939, were you such Deputy Clerk? A. Yes, I was.

(Testimony of Dorothy Titcomb.)

Q. And at that time who was the Clerk of the [3] Superior Court? A. Helen O'Keefe.

Q. And who was the Judge of the Superior Court of Santa Cruz County, Arizona?

A. Judge Gordon Farley.

Q. Was he such Judge on or about the 14th of June, 1939? A. Yes, sir.

Q. Now, you are the custodian, are you not, of the records of the Superior Court of Santa Cruz County? A. Yes, I am.

Q. And as to applications for marriage licenses?

A. Yes, I have them.

Q. And do you have with you at this time an application for the issuance of a marriage license to George V. Lane and Denzel Morgan?

A. Yes, I have.

Q. Is it the original?

(The witness hands document to Mr. Thurman.)

Mr. Thurman: Please mark this exhibit for identification.

(The document was marked as Government's Exhibit 1 for Identification.)

Q. Can you tell whose signature this is in [4] the right-hand lower corner of Exhibit 1 for identification? A. It is my signature.

Q. That is your signature "Dorothy Titcomb"?

A. Yes.

Q. And at that time you were the Deputy Clerk of the Superior Court of Santa Cruz County?

(Testimony of Dorothy Titcomb.)

A. Yes, I was.

Mr. Thurman: I offer it.

Mr. Wilson: To which offer, if the court please, we object on the ground there has been shown no application whatever to the issues involved in this case or that it refers to Denzel Rider, the woman now on trial in this case. We object to it on the grounds that it is not shown to be relevant or material to the issues here.

The Court: Well, it may become so. The objection is overruled.

Mr. Wilson: May we have an exception, if the court please?

The Court: Yes.

(The document was received as Government's Exhibit 1 in Evidence.)

Mr. Thurman: I hand you Government's Exhibit 1 in evidence and I will ask you if you know who wrote the signature "Denzel Morgan" on the instrument? [5]

A. It was the woman applying for the marriage license.

Q. And did you see the woman that applied for that marriage license sign that name "Denzel Morgan"?

A. Yes, I have.

Q. Where was that?

A. At the time she got the marriage license, applied for the marriage license in Nogales.

Q. In the Clerk's office?

A. In the Clerk's office.

Q. And is that woman in the court room now?

(Testimony of Dorothy Titcomb.)

A. Yes, she is.

Q. Is that the lady that sits there with her attorney, Mr. Wilson (indicating the defendant)?

Mr. Wilson: We object, if the court please, on the ground the question is leading and suggestive. I believe the witness should be permitted to——

The Court: (Interrupting) You may answer.

(The question was read by the reporter.)

The Witness: Yes, it is.

Mr. Thurman: And subsequent to that—subsequent to the issuance of the affidavit, the application for a marriage certificate, was there a marriage license issued? [6]

A. Yes, there was.

Q. Have you it with you?

A. I haven't the original here with me, I have a copy of it.

Q. What kind of a copy?

A. A certified copy (handing document to Mr. Thurman).

Mr. Thurman: Mark this for identification.

(The document was marked as Government's Exhibit 2 for Identification.)

Mr. Thurman: I hand you Government's Exhibit 2 for identification and ask you whose name appears on the back of it?

A. It is my—the signature is my name, Dorothy Titcomb.

Mr. Thurman: I offer it.

Mr. Wilson: The defendant objects, if the court please, on the ground that it proves to be merely a

(Testimony of Dorothy Titecomb.)

Mr. Wilson: You distinctly remember the issuance of this one? A. Yes, I do.

Q. And you remember, do you not, that there was some controversy between the gentleman in the case and the lady in the case?

A. No, there was not. The man didn't say anything.

Q. The controversy, if any, was between you and the defendant?

A. There was no controversy.

Q. Was there any mention of any property made at all to the best of your recollection by this woman?

A. The best of my recollection was that that was the reason she didn't want it published, so she wanted to get into her home before she notified her friends she was married.

Q. Is that the best of your recollection concerning what statements were made at that time?

A. Yes, it is.

Q. Is it possible that she could have questioned the effect of that marriage upon any property rights she might have had? A. No. [10]

Q. You are very certain of that?

A. I would have remembered that if she had.

Q. Did the gentleman in the case do any talking at all?

A. Only answered the questions I asked him concerning his application.

Q. He made no statement to the defendant?

A. Not that I heard. Now, I turned my back and went to type the marriage license, but as far

(Testimony of Dorothy Titcomb.)

as I heard, he didn't make any statement outside of the questions I asked.

Q. There was, then, a period during the issuance of this license, a period when you were not present with the man and the woman to hear what was said between them?

A. There was no time I was out of the room.

Q. No, but there was a time when you could not hear any conversation between them?

A. Well, when you are issuing a marriage license you don't issue it on their conversation.

Q. Well, I know that, Mrs. Titcomb, that is correct, you didn't hear everything that happened between this man and women at that time, isn't that true? A. That might have been so.

Mr. Wilson: Yes, that is all. [11]

Redirect Examination

Mr. Thurman:

Q. Now, prior to June 14th, 1939, how many marriage licenses or applications did you take?

A. Well, I think this was the ninth marriage license I had issued since I had been in the office. It was the second marriage license I had buried, not published.

Q. The second marriage license where you had been instructed not to publish it?

A. Yes, and it was the first marriage of a person of my own age, so that is one reason it stands out.

Q. That is what impressed it upon your mind?

A. Yes.

(Testimony of Dorothy Titcomb.)

Q. According to your remembrance?

A. Yes, sir.

Q. And there is no doubt in your mind that this defendant is the woman that signed that application?

A. No, sir.

Mr. Wilson: I object as leading.

Recross Examination

Mr. Wilson:

Q. Now, just one other question. Then, I take it from your testimony, Mrs. Titcomb, that [12] frequently you were asked not to publish marriage licenses, is that correct?

A. Since then, yes, Mr. Wilson, but this was the second one from the time I had taken office on the 8th of May to the 14th of June; this is only the second one I had been asked to bury.

Q. It was two out of nine you had been asked not to publish?

A. Yes.

Q. This defendant or this man were not the only parties that had. There were others that you were asked not to publish or issue, were there?

A. No, sir.

Q. Since then you have frequently been asked not to publish marriage licenses?

Mr. Thurman: I object—

Mr. Wilson: Is that right?

Mr. Thurman: It is immaterial, incompetent and irrelevant, your Honor.

The Court: Well, I think so too.

Mr. Wilson: What?

The Court: The objection is sustained.

Mr. Wilson: All right. That is all.

(The witness was excused.)

The Court: We will have a brief recess now, gentlemen, and during the recess you will not [13] discuss the case among yourselves or permit anyone to discuss it with you. Also do not form or express any opinion on the subject.

(A short recess was taken, after which, all parties as noted by the Clerk's record being present, the trial resumed as follows:)

The Court: Call your next witness.

Mr. Thurman: Judge Farley.

Will you mark this piece of paper here for identification?

(The document was marked as Government's Exhibit 3 for Identification.)

GORDON FARLEY

was called as a witness on behalf of plaintiff, and being first duly sworn, testified as follows:

Direct Examination

Mr. Thurman:

Q. Please state your name.

A. Gordon Farley.

Q. And what official position do you hold in Santa Cruz County, Arizona?

A. I am Judge of the Superior Court.

Q. And, Judge, how long have you been Judge of that Superior Court?

A. Since January 1st, 1939. [14]

(Testimony of Gordon Farley.)

Q. And you were such Judge, were you, on or about the 14th day of June, the year 1939?

A. I was.

Q. And you still are? A. Still am.

Q. I hand you Government's Exhibit 3 marked for identification and ask you if you know who wrote that signature on it? A. I do.

Q. Who?

A. The lady seated at the second table.

Q. That is, the defendant in this case?

A. Yes.

Mr. Thurman: I offer it.

Mr. Wilson: May I inquire of counsel, if the court please, for what purpose this is offered, what bearing it has upon the issues involved in this case?

The Court: Well, he probably will let you know in a moment.

Mr. Wilson: Oh, I think we have the right, in order to have a predicate for the proper objection, under the rules of evidence we ought to know.

The Court: All right.

Mr. Wilson: We object to it at this time on [15] the grounds there is no relevancy shown; that it is not material to the issues in any case here and not competent evidence.

Mr. Thurman: I want to offer it for the purpose of comparison, your Honor, of the signature of the defendant in this case. It is true that we have a certified copy of the marriage certificate between Mr. Lane and the defendant, but it is necessary to supplement on that, supplement it—sup-

(Testimony of Gordon Farley.)

plant it with additional evidence, and with our proof it is necessary to show with the other documents we expect to put into evidence with the signature which he put in for the purpose of comparison.

The Court: All right.

Mr. Wilson: May I interpose a further objection, on the grounds that a comparison cannot be made except on those documents which are introduced as a part of the case, and no extraneous signature may be introduced for that purpose.

The Court: It may be received.

Mr. Wilson: To which we respectfully ask an exception.

(The document was received as Government's Exhibit 3 in Evidence.)

Mr. Thurman: With respect to Exhibit 3 in [16] evidence, Judge, under what fact situation was it that this signature was written on this piece of paper here, Exhibit 3?

A. Well, the defendant came to Nogales some time last month and appeared in the Clerk's office and I went over there, I was on business in connection with the court, and the Clerk informed me that this was Mrs. Rider who had come down to Nogales for a copy of the marriage certificate, and she was accompanied by a gentleman and she asked me if I had ever seen her before and I think I told her that I didn't remember ever having seen her. Then she talked a little while and I said, "Did

(Testimony of Gordon Farley.)

you ever write me a letter in connection with a marriage license or a marriage, rather?" She said she had not, so then I requested her to sign her name to this slip of paper so that I might compare it with the signature affixed to the letter that I had received from this woman who had been married by me in '39. So, Mrs. Rider or Mrs. Lane, the defendant in this case, signed the name "Denzel Rider" and at my request, added the name "Morgan" to this slip of paper.

Q. Now, do you remember, Judge, of performing a marriage between George V. Lane and Denzel Morgan? [17] A. Yes.

Q. And was anything said between you and the defendant when she was down in Nogales recently with respect to their marriage?

A. Yes, we discussed the marriage and at that time she stated that she had not been married in Nogales and I told her that I could not identify her at that time, it had been several years and I had married quite a number of people in the meantime. I had no independent recollection of just who the people were, but I remember the marriage.

Q. What do you remember of that marriage, Judge?

A. Well, I have a faint recollection of the Clerk coming over to my office and telling me that there was a couple that wanted to be married and I recall that the woman appeared to be several years

(Testimony of Gordon Farley.)

older than the age given on the marriage license. The man was rather a young-appearing man and I would say he was probably 40—somewhere between 40 and 45, but the woman's age was listed as 39 on the marriage license and it occurred to me at the time that I thought she was several years older than that.

Q. That is the woman that you married at that time? [18]

A. Yes. We discussed that, the defendant and I, in our conversation in the Clerk's office when she was in Nogales last month. She commented on that fact, and I said, "Well, I distinctly remember that the couple I married, the woman was considerably older in my opinion than appeared on the marriage license".

Q. Judge, have you got the letter that was sent to you? A. I have.

Q. Signed by who?

A. It is signed by Denzel Rider.

Mr. Wilson: We object to it, if the court please, on the ground that the letter is the best evidence as to who signed it.

(The witness produces document and hands it to Mr. Thurman.)

The Witness: My reply is attached to that letter.

Mr. Thurman: The yellow sheet?

A. Yes.

Mr. Thurman: Mark the letter and the reply of the Judge for identification.

(Testimony of Gordon Farley.)

(The documents were marked as Government's Exhibit 4 for Identification.)

Mr. Thurman: Judge, is this letter in the [19] same condition it was when you received it in the mail?

A. It is. I believe that it has a red check-mark or two on it that was not on there, and I believe this is the filing mark that my secretary put on it. I am not certain about that.

Q. And about the signature, is that the signature that the letter bore when you received it in the mail?

A. It is the same signature.

Mr. Thurman: We make an offer of this letter, your Honor, for the purpose of only showing her admissions with respect to the marriage, and for no other purpose.

Mr. Wilson: To which we object, if the court please, on the grounds that there is no connection shown between this defendant and the offer of this letter, or that this defendant ever wrote this letter; had anything to do with it or any knowledge of it at all. We object to it on the grounds it is not material; it is not duly qualified to be received in evidence.

The Court: Well, let me see it then I will know more about it.

(The document was handed to the court.)

The Court: It may be received. [20]

(Testimony of Gordon Farley.)

Mr. Wilson: To which ruling the defendant respectfully excepts, if the court please.

(The documents were received as Government's Exhibit 4 in Evidence.)

Mr. Thurman: Now, with respect to your answer, Judge, did you mail that to the address of the defendant?

A. I did.

Q. At that time? A. Yes.

Q. And put postage on it? A. I did.

Q. And did the letter ever come back to you, the original letter?

A. It never did; that is, my original letter.

Q. That is, your answer to this letter?

A. No.

Mr. Thurman: I now ask that the pertinent part of the exhibit be read into the record pertaining to the matter of the marriage at Nogales.

The Court: Yes, there is some that should not be read.

Mr. Flynn: If the court please, I will now read into the record and to the jury the parts of Exhibit 4, Government's Exhibit 4 in evidence. The date is March 4th, 1940, Phoenix, Arizona, [21] Postoffice Box 1126.

(Testimony of Gordon Farley.)

“Honorable Judge Gordon Farley,
Nogales, Arizona.

“Dear Sir:”

Reading from the second paragraph of the first page:

“George V. Lane is in the real estate business here in Phoenix, and I have a auto parking lot which I had two years before I married him.”

On the second page in the first paragraph:

“When I got the loan to remodel the house he promised me that he would do the work, but when the time came I had to pay him \$6.00 a day the loan check will show that Denzel Rider paid George V. Lane a total of \$144.00 for labor, I don't know what he did with it, he said he owe bills that he had accumulated long before we were married. He has never as much as bought one thing for the home and at *know* time has he ever furnished me a place to live, when we were married he just moved his clothes in where I already was living.”

The same paragraph on page 2:

“He (Lane) says now that he is one-half owner because I used this money sence he and I were married.”

(Testimony of Gordon Farley.)

Paragraph 2 of page 2: [22]

“Lane is trying to do the same thing that Morgan did, steal the Rider property. Since I married him under the name of Denzel Morgan which is not my right name, of course I thought when you married me that was my name but sence I see on the records that Morgan filed the decree and gave me back the name of Rider I don't think that I am legally married to Lane.”

The third paragraph, page 2:

“Is it possible to have this done without any *noterity?*”

No, I guess I will have to read a part of the preceding paragraph for the connection here, continuing right from where I left off in the last quotation:

“All Lane wants with me is a meal ticket and the Rider property it is *possibly* to have this marriage annulled, if so I would like to have it done.

“Is it possible to have this done without any *noterity?* The reason I am writing you direct is because we came to you to get married. You married us June 14th, 1939, in your Chambers.”

The last paragraph of the letter on page 3:

“I would appreciate your *advise* at the ear-

(Testimony of Gordon Farley.)

liest *convience* that you have an opportunity to write me. I would appreciate it if this could all [23] be taken care of in Nogales. As *know* one in Phoenix know that I am married. I would not care if it was not for hurting my business here. But Lane would not hesitate just so long as he can get property for nothing.

“Thanking you in advance, yours truly”

and in writing and printing under that,

“Mrs. Denzel Rider, Postoffice Box 1126,
Phoenix, Arizona.”

Mr. Wilson: May I see that letter?

(The document was handed to Mr. Wilson.)

The Court: Is that all for this witness?

Mr. Flynn: Yes.

The Court: You may cross-examine.

Cross Examination

Mr. Wilson:

Q. Judge Farley, as I understand your direct testimony, it is that you cannot identify this defendant as the woman that was married by you to a man on the 14th of June, 1939, in your Chambers at Nogales, is that right?

A. Well, I have no recollection as to what either one of them looked like, except that the woman was older in my opinion than appeared on the marriage license.

Q. The question is, you cannot now identify

(Testimony of Gordon Farley.)

her as the woman in the case, and you so stated to [24] her at that time, did you, a couple of weeks ago?

A. No, that is true, I can't identify her. I don't know whether that is the woman or not.

Q. I believe you did say that you had her write her name? A. Yes.

Q. And that name has been introduced in evidence as Exhibit No. 3?

A. That is correct.

Q. Will you examine the signature on this letter, please, particularly the "D", the starting of the word "Denzel", and will you examine the "D" on this letter which will later be shown to be in the handwriting of George V. Lane and state, in your opinion if they were written by the same hand?

Mr. Thurman: We object to that. That is up to the jury.

The Court: He is not qualified as a handwriting expert.

Mr. Wilson: I see. All right, we will withdraw it; we will withdraw it at this time, if the court please. I think that is all, if the court please.

Mr. Thurman: That is all, Judge, thank you. Now, Judge Farley has to get back to Nogales and [25] with the permission of Mr. Wilson we would like to excuse him.

Mr. Wilson: Yes, that is all right.

The Court: Yes.

Mr. Thurman: Thank you.

(Testimony of Gordon Farley.)

The Witness: Thank you.

(The witness was excused.)

Mr. Thurman: Mr. Gross.

J. P. GROSS

was called as a witness on behalf of plaintiff, and being first duly sworn, testified as follows:

Direct Examination

Mr. Thurman:

Q. Please state your name?

A. J. P. Gross.

Q. Where do you live, Mr. Gross?

A. In Tucson.

Q. And what was your—what is your business or occupation?

A. I am Attorney for the Veterans' Administration.

Q. The what?

A. Attorney for the Veterans' Administration.

Q. And the Veterans' Administration is a department of the Government of the United States [26] of America, is it? A. Yes, sir.

Q. And how long have you been such Attorney for the Veterans' Administration?

A. Almost 20 years.

Q. And what has been your activities as Attorney for the Veterans' Administration over the past 20 years; what sort—

(Testimony of J. P. Gross.)

Mr. Wilson (Interrupting): I object as not material to the issues in the case.

The Court: No, that might cover a lot of—

Mr. Thurman (Interrupting): Well, can you tell the court and jury here the method of handling and paying widow's compensation for deceased World War Veterans?

Mr. Wilson: We object to it, if the court please, first, on the ground that it is not shown that this witness has anything to do with the payment of claims which, I believe will be admitted, comes out of Washington or some other place. I might be mistaken, am I, Mr. Gross?

The Witness: It is paid out of Washington.

Mr. Wilson: They are asking for an opinion on the law which, I think he should be qualified to express an opinion first.

Mr. Thurman: And, as Lawyer for the Veterans' [27] Administration, what has been your duties; what are your duties with respect to the investigating and preparing and interviewing with respect to awards made to widows of deceased veterans?

A. I represent the Administrator of Veterans' Affairs with respect to all claims within this jurisdiction, embracing not only active, live cases; that is, where veterans are still living, but with respect to veterans deceased and their dependents are paid. We handle all of those cases.

Q. And do you know of your own knowledge the

(Testimony of J. P. Gross.)

necessary steps a widow of a deceased veteran would take in obtaining an award? A. Yes, sir.

Q. Please state to the court and jury what those steps are.

A. Before I came to Arizona I was in Washington and handled all types and cases, and it is based on a Claim No. 526, which is an affidavit and an application made by the claimant based on the military service of some man and bearing a "C" number of claim number. This was all identified with one file. They are passed upon by a group of examiners and awards officers. They usually request evidence in support of the claims, such as marriage—— [28]

Mr. Wilson (Interrupting): If the court please, we object to this testimony on the grounds that the regulation of the department would certainly be the best evidence of what is done and what is the regulation in the matter of settlement and payment of claims, and this witness is not qualified on matters he now purports to testify to.

The Court: Go ahead.

Mr. Wilson: We except to the ruling of the court.

The Witness: In connection with every Application Form 526 by a beneficiary, they require evidence of a relationship, and that is usually in the form of a marriage certificate to support it, and if the evidence appears to be in order an award is made and a notice of that award is given the beneficiary.

(Testimony of J. P. Gross.)

Mr. Thurman: Have you in your files the original application for an award due on account of the death of a veteran signed by one Denzel Lane Rider?

A. Yes, sir.

Q. The unmarried widow of Arthur C. Rider?

A. Yes, sir.

Q. Will you produce it, please? [29]

A. Here is the original Form 526, July 24th, 1922 (handing document to Mr. Thurman).

Q. And this has been in your care and custody as Attorney for the Veterans' Bureau?

A. Yes, sir.

Mr. Thurman: Please mark the application for identification.

(The document was marked as Government's Exhibit 5 for Identification.)

Mr. Thurman: And this is in the same form as when you first received it?

A. Yes, sir; that is the original document.

Q. Has that signature on the back of it been there at all times? A. Yes, sir.

Q. The same form and in the same manner?

A. Yes, sir.

Q. Has not been changed?

A. Not at all.

Mr. Thurman: I offer it.

Mr. Wilson: May we ask on voir dire?

Q. Are you the custodian of this document,

(Testimony of J. P. Gross.)

the particular one you have just identified, Mr. Gross?

A. That is by the delegation of the Administrator. [30]

Q. For this particular case or generally do you have custody of these?

A. I am designated under Section 5 for all cases within the jurisdiction.

Q. In Arizona, you mean? A. Yes, sir.

Q. This was never filed with you originally?

A. No, sir.

Q. You obtained this from some other party, did you? A. From Washington.

Q. From Washington, D. C.?

A. Yes, sir.

Q. But the office at Washington, D. C. is the proper custodian of the instrument?

A. I am the proper custodian of the instrument. They have delegated it to me, sir.

Mr. Wilson: We object to it on the ground the witness has not been qualified.

The Court: Overruled.

Mr. Wilson: Exception, please.

Mr. Thurman: Mark it in evidence.

(The document was marked as Government's Exhibit 5 in Evidence.)

Mr. Thurman: Subsequent to the presentation of the application in this case, did the department [31] ever grant an award? A. Yes, sir.

(Testimony of J. P. Gross.)

Q. And have you got the original copy of the award?
A. Yes, sir.

Q. Will you produce it, please?

A. There it is right there (handing document to Mr. Thurman).

Mr. Thurman: Please mark the Award of Compensation for identification.

(The document was marked as Government's Exhibit 6 for Identification.)

Mr. Thurman: Mr. Gross, I will ask you if this exhibit that is marked for identification is the usual customary form sent to a widow when an award has been allowed by the department?

A. Yes, sir; it is.

Mr. Thurman: I offer the exhibit in evidence.

Mr. Wilson: And the same objection as to the former exhibit on the ground that this witness is not qualified, is not now shown to be the proper custodian of the instrument testified to.

The Court: The same ruling.

(The document was received as Government's Exhibit 6 in Evidence.)

Mr. Thurman: Mr. Gross, after an award has [32] been allowed, how is it paid?

A. It is paid on the United States Treasury check by the Disbursing Officer of the Veterans' Administration.

Mr. Wilson: Now, we object to that and move that it now be stricken, on the grounds that the

(Testimony of J. P. Gross.)

witness has not been qualified to testify how the award was made and the manner of the payment or if it ever was paid.

Mr. Flynn: Do you know just generally, not talking about this specific case?

Mr. Thurman: Just asked him about the general custom.

Mr. Wilson: We object on the ground it is not applicable to the issues in this case; has no bearing, not material.

The Court: The answer may stand.

Mr. Wilson: Exception.

Mr. Thurman: Please mark this for identification.

(The document was marked as Government's Exhibit 7 for Identification.)

Mr. Thurman: We offer Government's Exhibit No. 7 for identification in evidence.

Mr. Wilson: And the same objection, if the court please, as to the former two exhibits. [33]

Mr. Thurman: That is a certified copy.

Mr. Wilson: Our objection the same as to the former two exhibits.

The Court: It may be received.

Mr. Thurman: Please mark that in evidence.

(The document was received as Government's Exhibit 7 in Evidence.)

Mr. Wilson: Exception.

Mr. Thurman: When an award has been al-

(Testimony of J. P. Gross.)

lowed, how are the awards kept track of, do you know; that is, how are they designated?

A. They are designated by numbers and identified by numbers assigned to each individual payee's case and those are borne out not only on the claim itself, on the award itself, but also on the checks issued by the United States Treasurer.

Q. Would any two awards have the same number?

A. Yes, sir; it should be stamped on the face of the check.

Q. I say, would any two different awards, say an award was made to a widow A, B or C, would they likely have the same number?

A. No two awards would have the same number.

Q. Referring you to Government's Exhibit No. 6 in evidence, I will ask you if you can find the award number in this particular matter? [34]

A. The award number "C", sir, is "C-824,832".

Q. And if there was a "X" before it, what would that "X" mean?

A. "X" would mean that the party was then deceased.

Q. And referring to Government's Exhibit No. 7 in evidence, I will ask you if you will find the number on the face of the checks of the award?

A. Yes, sir; it appears at the right-hand corner of the payee's name, "XC-824832".

Mr. Thurman: Please mark this piece of paper for identification.

(Testimony of J. P. Gross.)

(The document was marked as Government's Exhibit 8 for Identification.)

Mr. Thurman: Mr. Gross, I hand you Government's Exhibit 8 for identification. Is it a part of your records filed in this case now before the court?

A. Yes, sir; it is.

Q. And there is the signature of who?

A. Mrs. Denzel Rider.

Mr. Thurman: I offer it.

Mr. Wilson: May I ask this one question?

Q. Did you see Mrs. Denzel Rider write this signature? A. No, sir. [35]

Mr. Wilson: We object to it on the grounds it is not duly qualified to be received in evidence as a letter written by this defendant; no connection has been shown.

The Court: It may be received.

(The document was received as Government's Exhibit 8 in Evidence.)

Mr. Thurman: The number as set forth here in Government's Exhibit 8 in evidence, does it correspond with the number on the checks and in the award?

A. The number is XC-824832; XC-824832 (checking documents). It corresponds.

Mr. Flynn: I'd like to take up the exhibits with the jury briefly.

Mr. Wilson: At this time before counsel exhibits the exhibits to the jury, may we move to strike Government's Exhibit No. 7 on the ground

(Testimony of J. P. Gross.)

it appears to be merely a copy, and the proper foundation for the receipt of secondary evidence has not been offered?

The Court: Which was that?

Mr. Flynn: That was certified.

Mr. Wilson: That is the one that listed the checks, and one thing or another. I believe this defendant is entitled to receive the original [36] checks.

The Court: A certified copy is sufficient.

Mr. Wilson: An exception.

The Court: Now, it is almost 12. You can read those after lunch. We will suspend until 2, gentlemen. Keep in mind the court's admonition.

(A recess was taken at 12 o'clock noon.)

2 o'clock P. M., after recess on the same day, all parties as noted by the Clerk's record being present, the trial resumed as follows:

J. P. GROSS

resumed the witness stand and testified further as follows:

Direct Examination

(Resumed)

Mr. Thurman:

Q. Mr. Gross, referring to Exhibit No. 6 in evidence which was an award of compensation, how did this department notify the recipients of an award after they were made, generally?

A. They sent them a letter notifying them that

(Testimony of J. P. Gross.)

the award on the application previously filed had been granted, and telling them the conditions under which the award was made and under which it was continued.

Q. And all the department would have, would be a copy of that notice of award? [37]

A. That is right.

Q. That is, the original would be sent to the party who was the recipient in this case, would be the widow? A. The beneficiary, yes.

Mr. Flynn; Now, if the court please, I will now read from Government's Exhibit No. 1 in this matter, the application of George V. Lane and Denzel Morgan for a license to marry.

(The document was then read to the jury by Mr. Flynn.)

Mr. Flynn; Exhibit No. 3 shows the signature of Denzel Rider Morgan. Exhibit No. 5 is the application of widow, child or dependent parent.

(The document was then read to the jury by Mr. Flynn.)

Mr. Flynn: And Exhibit No. 7 consisting of a series of six checks on the Treasurer of the United States. The first check on the exhibit is dated June 30th, 1940.

(Thereupon Government's Exhibits No. 7 and 8 were read to the jury by Mr. Flynn.)

Mr. Thurman: Take the witness.

(Testimony of J. P. Gross.)

Cross Examination

Mr. Wilson:

Q. I don't know, Mr. Gross, whether you [38] testified on direct examination that you had made an investigation in this case?

A. I didn't so testify, but I did.

Mr. Wilson: Well, that is all right if you didn't. I won't inquire, then, into it. That is all, if the court please.

Mr. Thurman: That is all, thank you.

(The witness was excused.)

Mr. Thurman: We rest, your Honor.

DEFENDANT'S CASE

Mr. Wilson: Call the defendant.

DENZEL RIDER

was called as a witness in her own behalf, and being first duly sworn, testified as follows:

Direct Examination

Mr. Wilson:

Q. Your name is Denzel Rider?

A. That is right.

Q. The defendant in this cause? A. Yes.

Q. And, Mrs. Rider, I believe you were born [39] and raised in the State of Indiana, is that right?

A. Yes.

(Testimony of Denzel Rider.)

Q. And in what year were you born, Mrs. Rider?

A. Well, I am 47. I'd have to count back. I was 47 the 12th of September and I'd have to count back on that.

Q. You married Arthur C. Rider?

A. Yes.

Q. A World War Veteran? A. Yes.

Q. And when did you marry him and where?

A. In Anderson, Indiana on the 3d day of April, 1920.

Q. And are there any children as a result of that marriage? A. Yes.

Q. How many? A. One.

Q. And his name is Vaughn Rider?

A. Yes.

Q. And when was he born?

A. On February 20th, 1921.

Q. And is he now residing with you?

A. No, he is in the army. I have a telegram he is on his way here.

Q. I see, all right. When did Mr. Arthur C. [40] Rider die? A. On July 14th, 1922.

Q. And since then, Mrs. Rider, you have been awarded a Government pension of approximately \$30.00 a month by the Federal Government?

A. Yes.

Q. As the widow of Arthur C. Rider, a veteran of the World war? A. Yes, sir.

Q. And ever since that time you have collected that pension, have you? A. Yes.

Q. Up until what time?

(Testimony of Denzel Rider.)

A. I received a notice from the Veterans' Claim Bureau on December—the letter was written on December 4th, 1940, and I received it about the 8th of December, 1940.

Q. Since then you have not received the widow's pension? A. No.

Q. It has been denied you, is that right?

A. Yes.

Q. How long have you resided in the City of Phoenix, Arizona, approximately?

A. Since October, 1931.

Q. And what business are you now engaged in [41] and have been for the past several years?

A. Parking lot business, parking automobiles and selling gasoline.

Q. You are operating a parking lot for automobiles? A. Yes, sir.

Q. And run a service station?

A. Yes, sir.

Q. You do that personally, do you?

A. Yes, sir.

Q. And where is your place of business located?

A. At Second Street and Monroe. It is on Second Street.

Q. On Second Street?

A. And Monroe, on the southeast corner.

Q. How long have you been engaged in that business?

A. Started in the parking lot business in October of 1937.

(Testimony of Denzel Rider.)

Q. When, Mrs. Rider, did you first meet a man known as George V. Lane, about when?

A. Well, it was about the latter part of March or the first of April. It was about six weeks after I had wired the Attorney General's office for help. [42]

Q. What year? A. 1939.

Q. The latter part of March or the early part of April, 1939, is that right?

A. Yes, that is right.

Q. Prior to that day, had you had any difficulty concerning any of your property, personal property? A. Yes, sir.

Q. At that time were you asserting any claim against people for the theft of your property?

A. Yes, sir.

Q. And at that time and prior thereto, had you been assaulted physically by any parties in the City of Phoenix because of this claim?

Mr. Thurman: I object to that as immaterial, incompetent and irrelevant.

The Court: What does that have to do with this?

Mr. Wilson: Your Honor, this is all, I might say our whole defense goes to the question of criminal intent. The statute provides that the Government must show that this was done to defraud the United States Government and I propose to show by this witness the claim that she had made because of this property, the appeal to the [43] authorities and the advent of George V. Lane representing

(Testimony of Denzel Rider.)

himself to be with the Department of Justice, and to show what has happened from that time on up to the present moment. Now, if there be any question on the law, I think I am prepared to show it.

The Court: Well, I will sustain the objection, then.

Mr. Wilson: All right, an exception, please, to the ruling of the court.

Q. Had you, prior to the time you met George V. Lane, applied to the Department of Justice of United States for assistance in your behalf?

A. Yes.

Mr. Thurman: I object to that on the same ground that I objected to before.

The Court: The same ruling.

Mr. Wilson: Exception, please, to the ruling of the court. Did you overrule it?

The Court: No, I said the same ruling.

Mr. Wilson: Oh, the same ruling, that is what I thought. May we have an exception.

Q. And let me ask you, Mrs. Rider, if this, showing you a telegram, or I am making this more in the nature of proof. I would like to have a conference with your Honor, because I don't want [44] to do anything that does now appear to be discourteous, but I will make an offer of proof to your Honor what I intend to prove, and if your Honor is going to sustain it all the way through, then we can rest our case. Is that the telegram you sent to the Department of Justice on the latter part of January, 1939?

(Testimony of Denzel Rider.)

Mr. Thurman: I object to the question, immaterial and incompetent.

The Court: It has not been offered.

The Witness: Yes, this is the telegram I wired. It is a copy of the telegram.

Mr. Wilson: And showing you this letter, is that the letter that you received from the Department of Justice in answer to your telegram?

A. Yes, sir.

Mr. Wilson: Now, we offer this telegram in evidence, if the court please, at this time. It is so badly worn that I will leave it there just temporarily and we will offer the letter also.

Mr. Thurman: We object to that, your Honor, as being incompetent, immaterial and irrelevant.

The Court: All right, let me see it.

(The documents were handed to the court.)

Mr. Wilson: That other is not offered, your Honor, at this time. I think they are all [45] attached together.

Mr. Thurman: We make a further objection, your Honor, that it is self-serving also.

The Court: I don't see what it would have to do with this case. I don't see any connection with the matter charged in this indictment.

Mr. Wilson: Except that it will touch upon the question of criminal intent of the accused in doing the things set out in the indictment, the things which she is charged with doing that constitute the crime.

(Testimony of Denzel Rider.)

The Court: The objection will be sustained.

Mr. Wilson: All right, and may we have an exception to the ruling of the court, and may these be marked for identification in the case?

The Clerk: Do you want this as one exhibit?

Mr. Wilson: No, I want them as separate exhibits.

The Clerk: The telegram will be Defendant's Exhibit "A" for Identification; the letter is Defendant's Exhibit "B" for Identification.

Mr. Wilson: Following that, Mrs. Lane, I believe you already testified then in March or the early part of April you met George V. Lane?

A. My name is Rider.

Q. What? [46]

A. You called me "Lane".

Q. I said, "Mrs. Rider". I said, you met George V. Lane, did you, in March or April, 1939?

A. Yes.

Q. Where did you meet him?

A. He came to my parking lot on Second Street and Monroe about 2 o'clock in the afternoon.

Q. Was he in company with anyone, or was he alone? A. He was alone.

Q. Was he carrying anything at the time?

A. A briefcase.

Q. Will you tell the conversation that you had with George V. Lane at that time?

A. Well, when people come on my parking lot, most of my people pay by the week——

(Testimony of Denzel Rider.)

Mr. Thurman: I think that is highly objectionable about relating this conversation with this man Lane at that time. There is a marriage that has been proved here in this court room, and it is self-serving.

The Court: What was the date of this visit, before or after the alleged——

Mr. Wilson (Interrupting): This was in the latter part of March or early part of April, 1939.

The Court: It is rather hard to tell whether [47] it would be material or not.

Mr. Thurman: Your Honor, I don't believe it would be admissible unless the witness would admit the marriage. The marriage is proven here.

The Court: Well, I will sustain the objection.

Mr. Wilson: May there be an exception to the ruling of the court. Now, may I have a conference with counsel and with your Honor just to shorten this matter and to show to the court what we——

(The following discussion was had at the Bench between court and counsel not audible to the jury).

Mr. Wilson: We now make a formal tender of proof in this case, and the proof all goes to the question solely on the intent of the accused that the crime—at the time she performed the acts charged against her in the indictment and which it is claimed constituted a crime. To that we will attach the documents that will corroborate it.

The Court: Have you read this?

(Testimony of Denzel Rider.)

Mr. Thurman: I have not.

Mr. Wilson: These exhibits should be attached to it.

Mr. Thurman: I want to object to the offer of proof of the defendant in this case, for the reason is it self-serving, incompetent, irrelevant and immaterial, and there is no basis for defense [48] in this action.

The Court: I think that is true; self-serving.

Mr. Wilson: And the ruling of the court is sustaining the objection?

The Court: Yes.

(Counsel then resumed their places in the court room and the following proceedings were continued within the hearing of the jury.)

Mr. Wilson: At this time, if the Court please, the defendant respectfully excepts to the ruling of the court denying our right to substantiate our offer of proof, and may we have the privilege of having our offer of proof with the documents supporting it made exhibits in this case?

The Court: Yes.

(The documents were received and marked as Defendant's Exhibit "C" for Identification.)

Mr. Wilson: If the court please, the defendant at this time will rest. That is all, Mrs. Rider, you may come off the stand.

The Court: Do you have any cross examination?

Mr. Thurman: No cross examination.

Mr. Flynn: Shall we proceed with the argument?

The Court: Yes. [49]

Mr. Wilson: At this time, however, if the court please, the defendant, in view of the fact that the testimony is closed and the Government and the defendant have rested, we now move the court for an order directing the jury in this case to return a verdict of not guilty on each count in the indictment, on the grounds that the proof offered by the Government is not sufficient to prove the allegations of the indictment or the commission of any crime by this accused beyond any reasonable doubt, that there is complete failure of proof to show that this accused, on the 14th day of June, 1939, or at any time or place ever contracted marriage with any man, or to show that she was not, when she was not, when she endorsed those checks, the unremarried widow of Arthur C. Rider, and upon that we move for a directed verdict.

The Court: The motion is denied.

Mr. Wilson: And may there be an exception?

The Court: Yes.

(Thereupon arguments were presented to the jury by counsel for the respective parties, after which the court instructed the jury as follows:)

[50]

The Court: Gentlemen, it now becomes the court's duty to instruct you as to the law that applies to this particular case. I will read a portion of the World War Veterans' Relief Act:

“The surviving widow, child, or children of and deceased person who served in the World War before November 12th, 1918, or if the person was serving with the United States military forces in Russia before April 2d, 1920, who, while receiving or entitled to receive compensation, pension, or retirement pay for 10 per centum disability or more presumptively or directly incurred in or aggravated by service in the World War, dies or has died from a disease or disability not service connected shall, upon filing application and such proofs in the Veterans' Administration as the Administrator or Veterans' Affairs may prescribe, be entitled to receive compensation”, or

“The surviving widow, child, or children of any deceased person who served in the World War before November 12, 1918, or if the person was serving with the United States military forces in Russia before April 2d, 1920, and who was honorably discharged after having served ninety days or more, or who, having served less than ninety days, was discharged for disability incurred in [51] the service in the line of duty, who dies or has died from a disease or disability not service connected and at the time of death had a disability directly or presumptively incurred in or aggravated by service in the World War for which compensation would be payable if 10 per centum or more in degree, shall, upon filing application and such proofs in the Veterans' Admin-

istration as the Administrator of Veterans' Affairs may prescribe, be entitled to receive compensation.

“The monthly rates of compensation shall be as follows: Widow but no child, \$30.00; widow with one child, \$38.00—

“The term ‘person who served’ shall mean a person, whether male or female, and whether commissioned, enlisted, enrolled, or drafted, and who was finally accepted for active service in the military or naval forces of the United States, members of training camps authorized by law, and such other persons heretofore recognized by statute as having a pensionable status.

“An and after May 13th, 1938, for the purpose of payment of compensation under the laws administered by the Veterans' Administration, the term ‘widow of a World War veteran’ shall mean a woman who was married prior to May 13th, 1938 to the [52] person who served: Provided, that all marriages shall be proven as valid marriages according to the law of the place where the parties resided at the time of marriage or the law of the place where the parties resided when the right to compensation accrued. Compensation shall not be allowed a widow who has remarried either once or more than once, and where compensation is properly discontinued by reason of remarriage it shall not thereafter be recommenced.

“The penal and forfeiture provisions relating to pensions and compensation contained in section 701-703, 704, 705, 706, 707-715, 716-721 of this title shall be applicable to claims for compensation under the sections.” I have just read.

“Whoever shall obtain or receive any money, check or pension under sections 701-703, 704, 705, 706, 707-715, 716-721 of this title, and under sections 30a, 485 or Title 5 or regulations issued thereunder without being entitled to the same, and with intent to defraud the United States or any beneficiary of the United States, shall be punished”

as in that section provided.

The intent or the intention is manifested by the circumstances connected with the transaction, and the sound mind and discretion of the accused. [53] The intent with which an act is committed being but a mental state of the party accused, direct proof of it is not required; nor, indeed, can it ordinarily be so shown, but it is generally derived from and established by all the facts and circumstances attending the doing of the act complained of as disclosed by the evidence. In order for you to determine this question, you will look to all the evidence, oral and documentary in the case, and to all the facts and circumstances in connection therewith.

Every man is presumed to intend the natural and probable consequences of his own act.

By the finding of an indictment no presumption

whatsoever arises to indicate that a defendant is guilty, or that he has had any connection with, or responsibility for, the act charged against him. A defendant is presumed to be innocent at all stages of the proceedings until the evidence introduced on behalf of the Government shows him to be guilty beyond a reasonable doubt. And this rule applies to every material element of the offense charged. Mere suspicion will not authorize a conviction. A reasonable doubt is such a doubt as you may have in your minds when, after fairly and impartially considering all of the [54] evidence, you do not feel satisfied to a moral certainty of the defendant's guilt. In order that the evidence submitted shall afford proof beyond a reasonable doubt, it must be such as you would be willing to act upon in the most important and vital matters relating to your own affairs.

Reasonable doubt is not a mere possible or imaginary doubt or a bare conjecture; for it is difficult to prove a thing to an absolute certainty.

You are to consider the strong probabilities of the case. A conviction is justified only when such probabilities exclude all reasonable doubt as the same has been defined to you. Without it being restated or repeated, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered in connection with and as accompanying all the instruction that are given to you.

In judging of the evidence, you are to give it a

reasonable and fair construction, and you are not authorized, because of any feeling of sympathy or other bias, to apply a strained construction, one that is unreasonable, in order to justify a certain verdict when, were it not for such feeling or bias, you would reach a contrary conclusion. And, whenever, after a careful consideration of [55] all of the evidence, your minds are in that state where a conclusion of innocence is indicated equally with a conclusion of guilt, or there is a reasonable doubt as to whether the evidence is so balanced, the conclusion of innocence must be adopted.

You are the sole judges of the credibility and the weight which is to be given to the different witnesses who have testified upon this trial. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testified; by the character of his testimony, or by evidence affecting his character for truth, honesty and integrity or his motives; or by contradictory evidence. In judging the credibility of the witnesses in this case, you may believe the whole or any part of the evidence of any witness, or may disbelieve the whole or any part of it, as may be dictated by your judgment as reasonable men. You should carefully scrutinize the testimony given, and in so doing consider all of the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the relations which he bears to the Government or the defendant, the manner in which he might be [56] affected by the verdict and the extent to which he

is contradicted or corroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon his credibility. If a witness is shown knowingly to have testified falsely on the trial touching any material matter, the jury should distrust his testimony in other particulars, and in that case you are at liberty to reject the whole of the witness' testimony.

There is nothing peculiarly different in the way a jury is to consider the proof in a criminal case from that by which men given their attention to any question depending upon evidence presented to them. You are expected to use your good sense, consider the evidence for the purposes only for which it has been admitted, and in the light of your knowledge of the natural tendencies and propensities of human beings, resolve the facts according to deliberate and cautious judgment; and while remembering that the defendant is entitled to any reasonable doubt that may remain in your minds, remember as well that if no such doubt remains the Government is entitled to a verdict. Jurors are expected to agree upon a verdict where they can conscientiously do so; you are expected to consult with one another in the jury room and any juror should not hesitate to abandon his own [57] view when convinced that it is erroneous. In determining what your verdict shall be you are to consider only the evidence before you. Any testimony as to which an objection was sustained, and any testimony which was ordered stricken out, must be wholly left out of

account and disregarded. The opinion of the judge as to the guilt or innocence of a defendant, if directly or inferentially expressed in these instructions, or at any time during the trial, is not binding upon the jury. For to the jury exclusively belongs the duty of determining the facts. The law you must accept from the court as correctly declared in these instructions.

After you retire to your jury room you will select one of your number to act as foreman and proceed with your deliberations. Any verdict agreed upon must be signed by your foreman and returned into open court and, of course, you understand that any verdict agreed upon must be the unanimous verdict of the jury.

A form of verdict has been prepared for your guidance. Omitting the title of the court and the cause, the verdict reads:

“We, the jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find [58] the defendant Denzel Rider blank as charged in count one of the indictment, blank as charged in count two of the indictment, blank as charged count three of the indictment, blank as charged in count four of the indictment, blank as charged in count five of the indictment, and blank as charged in count six of the indictment. You will insert in the blanks either “Guilty” or “Not Guilty”, whatever your verdict may be.

You may swear the bailiffs to take care of the jury.

(Thereupon the bailiffs were sworn and the jury retired from the court room at 3:47 o'clock P. M. of the same day to deliberate on its verdict.)

The trial ended at 3:47 o'clock P. M. of the same day. [59]

I Hereby Certify that the proceedings had and the evidence given upon the trial of this cause is contained fully and accurately in the shorthand notes taken by me of said trial, and that the foregoing 59 pages contain a full, true and accurate transcript of the same.

LOUIS L. BILLAR

Official Shorthand Reporter.

[Endorsed]: Filed Jan. 15, 1943.

[Endorsed]: No. 10335. United States Circuit Court of Appeals for the Ninth Circuit. Denzel Rider, Appellant vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Arizona.

Filed February 13, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10335

DENZEL RIDER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY ON AP-
PEAL AND DESIGNATION OF RECORD
ON APPEAL.

The appellant, Denzel Rider, adopts the Assignments of Error filed in the District Court as the points on which she intends to rely in this appeal, and designates the printing of the transcript of the record in its entirety, excepting the Government's exhibits other than as set forth in the Bill of Exceptions, as prepared and sent up by the Clerk of the District Court.

Dated at Phoenix, Arizona, this 11th day of February, 1943.

ROBERT R. WEAVER

GEO. T. WILSON

Attorneys for Appellant.

Received copy this 11th day of February, 1943.

FRANK E. FLYNN

United States Attorney

[Endorsed]: Filed Feb. 15, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION TO ELIMINATE GOVERNMENT'S EXHIBITS IN PRINTED ABSTRACT OF RECORD.

To obviate the necessity of printing the Government's exhibits at length in the printed abstract of record on the appeal of this cause,

It Is Stipulated and Agreed by and between the Government, represented by the Honorable Frank E. Flynn, United States Attorney for the District of Arizona, and the defendant appellant, represented by Robert R. Weaver and George T. Wilson:

1. That the defendant admits that the Government's evidence, oral and documentary, introduced upon the trial of this cause is sufficient in the absence of the evidence tendered by defendant in her written offer of affirmative proof, marked Exhibit "C" for Identification in the records of this cause, to support the verdict of the jury rendered in said cause; and

2. That the only question defendant-appellant will raise on the appeal of this cause is the ruling of the trial court sustaining the government's objection to the defendant's testimony as substantially set forth in said written offer of affirmative proof.

Dated this 8th day of March, 1943.

FRANK E. FLYNN

United States Attorney for
the District of Arizona.

ROBERT R. WEAVER

GEO. T. WILSON

Attorneys for Appellant

[Endorsed]: Filed March 11, 1943. Paul P.
O'Brien, Clerk.

